

Ford DPS6 "PowerShift" Class Action – Notice of Opt Out Deadline

Federal Court of Australia Case No. NSD724/2016

Important Notice Affecting Current and Former Owners of certain Ford Focus, Ford Fiesta and Ford EcoSport cars

Why are you getting this notice?

A class action has been filed against Ford Australia (**Ford**) on behalf of current and former owners of Ford Focus, Ford Fiesta and Ford EcoSport cars with a DPS6 "PowerShift" transmission.

The class action, filed in the Federal Court of Australia, claims among other things that those cars are not of acceptable quality, and seeks damages from Ford on behalf of the current and former owners.

You are getting this notice because you may be a current or former owner. This notice describes the class action and the steps you should take if you don't want to be part of the class action. In early 2018, you may have received a notice about a proposal to seek a "common fund order" in this case. You can disregard that notice. It is replaced by this one.

You should read this notice carefully. Any questions you have concerning the matters contained in this notice should NOT be directed to the Court, Ford or any Ford Dealer. If there is anything in it that you do not understand, you should seek legal advice.

The opt out deadline is 10 March 2020.

What is this class action all about?

A class action is a claim which is made by one person (called the **Applicant**) for the benefit of people with similar claims (called the **Group Members**). The Applicant in this case is Ms Biljana Capic, a consumer who bought a Ford Focus. Ms Capic's class action is for the benefit of all current and former owners of Ford Focus, Ford Fiesta and Ford EcoSport models with a build year between 2010 to 2016 (inclusive) fitted with a DPS6 "PowerShift" transmission.

It is claimed by the Applicant that:

- (a) these cars have defects which affect their quality, safety, reliability and performance;
- (b) these cars are not of acceptable quality;
- (c) misrepresentations were made by Ford about the quality, safety, reliability and performance of the car, its transmission system and about the nature of the DPS6 "PowerShift" transmission
- (d) between 1 May 2015 and 29 February 2016, Ford engaged in unconscionable conduct by not dealing appropriately with requests by current and former owners of these cars for a refund or replacement vehicle;
- (e) because of the cars' defects current and former owners paid more for them than they were worth and, in some cases, incurred other expenses or losses (e.g., repair costs); and
- (f) Ford should therefore pay compensation to those current and former owners.

The trial will commence on **15 June 2020**.

Group Members in a class action are "bound" by any judgment or settlement entered into in the class action that is approved by the Court, unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful, Group Members may be eligible for a share of any settlement monies or Court - awarded damages;
- (b) if the class action is unsuccessful, Group Members are bound by that result; and
- (c) regardless of the outcome of the class action, Group Members will not be able to pursue their claims against Ford in separate legal proceedings unless they have opted out.

How do you know if you are affected by this class action?

You may be a Group Member in this class action if you acquired in Australia an interest in a Ford Focus, Ford Fiesta or Ford EcoSport model fitted with a DPS6 "PowerShift" transmission described below at any time between January 2011 and 29 November 2018. It does not matter whether you bought or leased the car from a Ford dealer, a non-Ford dealer or privately or whether it was supplied new or used.

Make	Model	Build Year
Focus	Titanium LW	2011 – 2012
	Sport LW	2011 – 2012
	Trend LW	2011 – 2012
	Ambiente LW	2011 – 2012
	Sport LW MKII	2012 – 2015
	Titanium LW MKII	2012 – 2015
	Ambiente LW MKII	2012 – 2015
	Trend LW MKII	2012 – 2015
	Fiesta	Zetec WT
LX WT		2010 – 2013
CL WT		2010 – 2013
Sport EcoBoost WZ		2012 – 2015
Trend WZ		2013 – 2016
Ambiente WZ		2013 – 2016
EcoSport	Titanium BK	2013 – 2016
	Trend BK	2013 – 2016
	Ambiente BK	2013 – 2016

What is 'Opt Out'?

The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf or to identify specific Group Members. However, Group Members can cease to be Group Members by opting out of the class action. An explanation of how Group Members are able to opt out is found below in the section headed "What do you need to do if you do not want to be part of this case?".

Who pays the lawyers?

The Applicant's lawyers are Corrs Chambers Westgarth. A company called Martin Place Litigation Services Pty Limited (the **Funder**) is funding the case, which means that it is paying the Applicant's legal costs, including the Applicant's costs of bringing the claim on behalf of all Group Members.

You do not have to pay money in order to participate in this case. If the class action fails, you will not have to pay anything.

Who pays the funding costs?

If there is a successful judgment or settlement, Group Members should be aware that, if an application is made to the Court, and if in all the circumstances it is fair, just, equitable and in accordance with principle, it is expected that the Court will make an appropriately framed order to prevent unjust enrichment and equitably and fairly to distribute the burden of reasonable legal costs, fees and other expenses, including reasonable litigation funding charges or commission, amongst all persons who have benefited from the action. If there is a successful judgment or settlement, it is intended that such an application be made.

What do you need to do if you want to continue to be part of this case?

You do not need to do anything to stay part of this case. You will continue to be part of this case unless you follow the steps in the next section and "opt out" of the case.

You do not need to register, but you may do so by filling in your details online at www.fordclassaction.net. Registration will ensure that you continue to be informed about the progress of the case.

If you have already registered, you do not need to register again. If you are not able to complete the online registration process, please email fordclients@corrs.com.au or phone (02) 9210 6568.

If the class action is successful you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and Group Members, although you may have to satisfy certain conditions before your entitlement arises.

All current and former owners of Ford cars who remain as Group Members will be bound by the result of the case in so far as it relates to them. If the class action is unsuccessful, or is not as successful as you might have wished, you will not be able to pursue the same claims and may not be able to pursue related claims against Ford in other legal proceedings.

What do you need to do if you do not want to be part of this case?

If you do not want to be part of the case, **you need to fill out a form and send it to the Registrar of the Federal Court of Australia at the address on the form. IMPORTANT: the notice must reach the Registrar by no later than 10 March 2020 otherwise it will not be effective.** The form is called an “**Opt-Out Notice**” and it is **Annexure A** to this notice. You can also get a copy of the Opt Out Notice at:

- (a) online at www.fordclassaction.net;
- (b) by emailing fordclients@corrs.com.au;
- (c) by writing to:

Ford Class Action
Corrs Chambers Westgarth
GPO Box 9925 in your capital city.

If you opt out of the case you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Ford, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Ford, you should seek your own legal advice about your claim and the applicable time limit prior to opting out. You should not delay making your decision.

Annexure A – Opt Out Notice

Form 21
Rule 9.34

Opt out notice

No. NSD 724 of 2016

Federal Court of Australia
District Registry: New South Wales
Division: General

Biljana Capic
Applicant

Ford Motor Company of Australia Limited (ACN 004 116 223)
Respondent

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Locked Bag A6000
Sydney South NSW 1235

_____ (name of group member), a class member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that _____ (name of group member) is opting out of the class action.

Make, Model and Model year of the Affected Vehicle	
VIN of Affected Vehicle	

Date: _____

_____ (signature)

_____ (print name)

_____ (capacity, eg, group member / lawyer for group member / position in company, if signing on company's behalf)