HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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Form 27B – Appellant's chronology

Note: see rule 44.02.3.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN: Biljana Capic
Appellant

and

Ford Motor Company of Australia Pty Ltd ACN 004 116 223
Respondent

APPELLANT'S CHRONOLOGY

3442-0625-2075v1

Part I: This chronology is in a form suitable for publication on the internet.

Part II: List of principal events leading to the litigation, with appropriate references to the appeal book in respect of findings of fact and evidence relating to those events.

	Date	Event	Reference[1]	Evidence
	2010			
1	July 2010	Production of 73,451 Affected Vehicles commences. Ford Motor Company of Australia Pty Ltd (**Ford**) subsequently imports the vehicles for supply in Australia and is the "manufacturer" within the meaning of s 7 of the Australian Consumer Law (**ACL**).	*Capic v Ford Motor Company of Australia Pty Ltd* [2021] FCA 715 (**PJ**), [41], [43], [45] (Core Appeal Book (**CAB**) 1.29-30)	
2	22 September 2010	Commencement of supply of new vehicles by Ford dealers in Australia. Supply of new vehicles continues until 29 December 2017.	PJ [17] (CAB 1.24)	
3	1 January 2011 to 29 November 2018 (inclusive)	The **Relevant Period.**	Fourth Further Amended Statement of Claim, [1(i)] (CAB 12.495)	
4	**Throughout the Relevant Period**	Affected Vehicles were supplied with one or more of 5 **Deficiencies**.	PJ [41], [43], [45] (CAB 1.29-30); Annexure A to the orders of 13 December 2023, questions 1-8, 11 and 11A (CAB 11.476-487)	

[1] References to the Core Appeal Book (**CAB**) are to the relevant tab and page of those materials. For example, "CAB 1.29" is a reference to Core Appeal Book, tab 1, p. 29.

	Date	Event	Reference[1]	Evidence
		(1) Architecture Deficiency 1 (damping)		
		All 73,451 (100%) Affected Vehicles were manufactured with a defect as to the approach taken to damping torsional vibrations in DPS6 transmissions, which is required to prevent clutch slip and consequent creation of heat (**AD1** or **Architecture Deficiency 1**).	PJ [41], [464], [493], [497], [498], [501], [503], [518], [530], [532], [961] (CAB 1.29, 159, 169-172, 179-180, 299-300); Answers to Common Questions (**CQA**) [2(a)], [7], [11A] (CAB 11)	
		AD1 is associated with the following issues: (a) for all vehicles, slight shudder under light acceleration at slow speeds or during a coast down, as the transmission upshifted or downshifted; (b) gear rattle or grattle, independent of lining; and (c) exacerbates the behaviours associated with CD1, CD2 and CD3.	PJ [451], [501], [503], [520], [522], [524], [533] (CAB 1.154, 171-172, 177-178, 180) FC [222]-[223], [227], [228]-[229] (CAB 10.449-450)	
		As to gear rattle, the risk is "high since Ford described it as a normal operating characteristic". As to "slight vibration or shudder… etc", this "becomes perceptible at low speeds" and an "ordinary incident of the operation of the DPS6". Ford did not establish these are features of any other dial clutch or dry dual clutch system.	PJ [524], [660]-[665], [888] (CAB 1.177-178, 216-217, 279)	

	Date	Event	Reference[1]	Evidence
		(2) Architecture Deficiency 2 (heat)		
		69,705 (94.9%) Affected Vehicles were manufactured with a defect caused by the lack of heat management in DPS6 transmissions (**AD 2** or **Architecture Deficiency 2**). This leads to: (a) difficult gear changes, given the torsional system generates excessive heat which causes the original lining to behave eccentrically; and (b) exacerbates the behaviours associated with CD1, CD2 and CD3.	PJ [513], [532] (CAB 1.174, 180) FC [222]-[223], [227], [228]-[229] (CAB 10.449-450	
		(3) Component Deficiency 1 (seals)		
		47,049 (64.1%) Affected Vehicles were manufactured with a defect relating to leaking input shaft seals in DPS6 transmissions, whereby lubricant contacts the clutch lining, making it "wet" and altering the frictional profile of the clutch lining in unpredictable ways (**CD1** or **Component Deficiency 1**). This affected:	PJ [225], [638] (CAB 1.84, 211)	
		(a) all Fiestas manufactured from 2010 until 20 August 2013;	PJ [231] (CAB 1.86)	
		(b) all Focuses manufactured before: (a) 28 June 2013 for Focuses manufactured at Saarlouis plant; and (b) 2 September 2013 for Focuses manufactured at Ford Thailand plant; and	PJ [231] (CAB 1.86)	
		(c) all Ecosports manufactured before 1 October 2013. (Note: Ecosports only manufactured from 2013).	PJ [41], [231] (CAB 1.29, 86)	

	Date	Event	Reference[1]	Evidence
		CD1 is associated with the following issues: (a) shudder, including on launch or gear shifts; (b) difficulties with gear selection, sudden or delayed gear shifts, jerking; (c) loss of power or roll back while in gear, sudden deceleration; (d) slower response times; (d) check engine light; (e) grinding noises, rattling noises, intermittent revving of engine. The risk of seal failure was "substantial" and "well in excess of 20% over the first 5 years of a vehicle's life".	PJ [225], [638] (CAB 1.84, 211) PJ [230] (CAB 1.86)	
		(4) Component Deficiency 2 (clutch lining)		
		68,810 (93.7%) Affected Vehicles were manufactured with a deficiency relating to B8080 clutch lining in DPS6 transmissions, whereby the frictional properties of B8080 presents a risk of friction variability in high operating environments, leading to negative damping and a condition in the transmission knowns as 'self-excited shudder', and in turn makes it more difficult for the transmission control module (**TCM**) to predict how components are performing and give accurate instructions for clutch operation (**CD 2** or **Component Deficiency 2**). This affected the following vehicles: (a) <u>Fiestas</u>: (i) all 1.6L Fiestas manufactured from outset in 2010 until last 1.6L Fiesta manufactured in December 2013; (ii) all 1.5L Fiestas manufactured from	PJ [239]-[246] (CAB 1.88-90) PJ [254], [266] (CAB 1.92, 95)	

	Date	Event	Reference[1]	Evidence
		outset in 2010 until switch in production from B8080 to RCF1o material from 7 January 2015; and (iii) no 1.0L Fox Fiestas affected.		
		(b) Focuses: all Focuses manufactured before September 2015 (at which point, Focus vehicles supplied in Australia were no longer produced with the DPS6 transmission).	PJ [239], [259], [261] (CAB 1.88, 93-94)	
		(c) EcoSport: All EcoSports manufactured before 3 September 2016 when switch in production from B8080 to "half hybrid" B8080/B8040 lining.	PJ [255], [275] (CAB 1.92, 99)	
		CD2 is associated with the following issues: (a) shudder with various mechanical causes found, each of which is experienced by the driver in materially the same way: (i) self-excited shudder due to negative damping: (ii) force-excited shudder due to geometric misalignment of clutch components; (iii) green shudder: (b) difficulty in changing gears, "harsh and jerky gear shifts": (c) "lack or loss of power": and (d) "noise, vibration and harshness issues".	PJ [241]-[244], [251] (CAB 1.88-91)	
		All vehicles with B8080 had a "real risk" of developing dry shudder. Ford US investigations in 2013 evidenced 50% of B8080 clutches with shudder "which is a lot". In 2016, Ford US suggested shudder problem "further deteriorated over the life of the clutch"; the "problem worsens over time".	PJ [231], [321] (CAB 1.86, 114)	

	Date	Event	Reference[1]	Evidence
		(5) Component Deficiency 3 (TCM)		
		64,585 (87.9%) Affected Vehicles were manufactured with the deficiency relating to ATIC 91 chips in the TCM in DPS6 transmissions (**CD 3** or **Component Deficiency 3**). This affected the following vehicles:	PJ [330], [331], [334], [335] (CAB 1.116-118)	
		(a) all Fiestas manufactured from outset in 2010 until new ATIC 91 chips introduced in production from: (a) 23 June 2014 for Fiestas manufactured at AutoAlliance Thailand plant; and (b) 10 November 2014 for all other Fiestas;	PJ [376] (CAB 1.131)	
		(b) all Focuses manufactured before 10 November 2014 when new ATIC 91 chips introduced in production; and	PJ [376] (CAB 1.131)	
		(c) all EcoSports manufactured before 10 November 2014 when new ATIC 91 chips introduced in production.	PJ [376] (CAB 1.131)	
		CD3 is associated with the following issues: (a) shudder; (b) loss of power while driving or at rest, symptoms depending on how long TCM is offline; (c) check engine light; (d) "real risk" of solder cracking which "carried with it a risk of a non-transitory loss of power" (a safety risk, for example in an overtaking situation or "midway through an intersection", "the potential for a serious accident [being] obvious".	PJ [345]-[347], [392], [397]-[399] (CAB 1.121-122, 137-139)	

	Date	Event	Reference[1]	Evidence
		There was a "real risk of failure", problems were "reasonably widespread". The problem was more likely to occur over time and gets worse once it manifests itself. Ford US and Ford Australia documents evidence "large number of negative customer experiences; "a real world problem, certainly a nine digit one".	PJ [352], [366]-[367] (CAB 1.122, 129)	
		As to the interrelationship of defects:		
		Applying the findings on liability to the population data: (a) Only 3,769 (5.1%) Affected Vehicles supplied only with AD1 (i.e, no component deficiency). (b) Remaining 69,705 (94.9%) Affected Vehicles supplied with AD1, AD2, and one or more of CD1, CD2 and CD3.	PJ [530], [961] (CAB 1.179, 299-300) FC [222]-[223], [227], [228]-[229] (CAB 10.449-450)	
		As to fixes available:	See Annexure A to the orders of 13 December 2023, revised answer to question 20 (CAB 11.491)	
		(a) **AD1:** no fix made available	Annexure A to the orders of 13 December 2023, answers to questions 19 and 20 (CAB 11.490, 492)	
		(b) **AD2:** fix for some Affected Vehicles, but not others. Vehicles with one or more unrepaired Component	Annexure A to the orders of 13 December 2023, answer to	

	Date	Event	Reference[1]	Evidence
		Deficiencies continued to have also AD2. Where no repair was available for one or more Component Deficiencies present in a vehicle, no repair was available for the AD2 also present in that vehicle.	question 20 (CAB 11.492)	
		(c) **CD1:** There was no effective fix available in service for CD1 until Ford offered a seal that was both: (a) made out of a different elastomer; and (b) had rubber backing. Earlier attempted fix using seals satisfying only (a) not proven to be sufficient. No finding made about whether/when an effective fix for CD1 was available in the field.	PJ [232], [739], [765] (CAB 1.86, 236, 243)	
		(d) **CD2:** An effective fix was available for CD2 in some vehicles (Fiestas only, and only on a "fix on fail" basis) from "around September 2016". The fix involved replacing the clutch with a wholly new clutch with RCF1o clutch lining material instead of B8080. There was no effective fix found for other models (Focuses or EcoSports manufactured with B8080).	PJ [26], [313]-[315], [764] (CAB 1.26, 111-112, 242-243)	
		(e) **CD3:** no "fix" available in service until both: (a) a warning software (15B22) was available to be installed when cars brought in for service; and (b) replacement ATIC 91 chips were actually available in service. The 15B22 overt warning software was available in the field. By 17 March 2017, 14% of vehicles	PJ [380], [384], [385], [387], [757] (CAB 1.133-135, 241)	

	Date	Event	Reference[1]	Evidence
		produced with old ATIC 91 chips had still not received the 15B22 overt warning software.		
5	27 Sep 2011	Brian Wolfe (Director, Transmission and Driveline Engineering at Ford Motor Company) emails James (Jim) Dearbaugh (Senior Purchasing Manager – PTI) with some notes about "Future DPS6 Considerations". Mr Wolfe records "The current DPS6 is not meeting warranty, TGW or customer acceptance goals" and the "Product Development team is reviewing alternatives" which include (1) upgrade DPS6 from a dry clutch to a wet clutch; or (2) "**Abandon DPS6 and replace with 6F15 globally**". Mr Wolfe notes that "Unfortunately, this product [ie the 6F15] is not ready until 2014 calendar year and would require significant investment within Ford (North America and Europe) to produce global DPS6 replacement volumes. In the meantime we must continue to invest in DPS6 capacity. Our strong desire is to hold the product course with dual clutches; however viable alternatives have not been identified by the Getrag engineering team".	PJ[934] (CAB 1.290)	VGS21274233 (C-198) (CAB 12.513) (ABFM 4).[2] See also the material and SAR briefing paper to which Mr Woolfe was responding at: VGS21274195 (C-196) (CAB 12.513) (ABFM 2) and VGS21274198 (C-197) (CAB 12.513) (ABFM 3) at 4199. 2010 Annual Report identifying officeholders (C-146) (ABFM 1).
6	27 Oct 2011	The Ford Motor Company global leadership team agree at a Special Attention Review meeting with the recommendation to approve a "long-term strategy" to abandon the DPS6 and move to a conventional automatic transmission system (6F15) rather than continuing to pursue dry dual clutch transmission technology.	PJ[934] (CAB 1.290)	VGS20143863 (C-199) (CAB 12.513) (ABFM 5). VGS20143864 (C-200) (CAB 12.513) (ABFM 6).

[2] References to the Appellant's Book of Further Material (**ABFM**) are to the relevant tab of those materials. For example, "ABFM 4" is a reference to Tab 4 of the Appellant's Book of Further Material.

	Date	Event	Reference[1]	Evidence
		Decision contingent upon (1) a Follow up Briefing and concurrence from Mark Fields (CEO of Ford Motor Company) and Stephen Odell (Chairman and CEO of Ford Europe); and (2) Agreement on proposed communication and negotiation strategy for Getrag. Practicalities mean that earliest a new transmission can be used in production is at least 2014.		VGS20143916 (C-201) (CAB 12.514) (ABFM 7). VGS20143918 (C-202) (CAB 12.514) (ABFM 8).
7	1 Nov 2011	Eric S Levine (Manager, Transmission & Driveline Commodity Planning) emails briefing document to Stephen Odell (Chairman and CEO of Ford Europe) briefing him on the Special Attention Review (SAR) Committee decision in October 2011 to abandon the DPS6.	PJ[934] (CAB 1.290)	VGS20143863 (C-199) (CAB 12.513) (ABFM 5). VGS20143864 (C-200) (CAB 12.513) (ABFM 6) (includes full briefing paper to leadership team at SAR).
8	By 4 Nov 2011	Mark Fields (CEO of Ford Motor Company) and Stephen Odell (Chairman and CEO of Ford Europe) have been briefed and concurred with the agreement of the leadership team in the Special Attention Review Committee to abandon the DPS6.	PJ[934] (CAB 1.290)	VGS20143916 (C-201) (CAB 12.514) (ABFM 7). VGS20143918 (C-202) (CAB 12.514) (ABFM 8) (short form briefing document). See also: Expert report of Dr Jürgen Greiner dated 22 November 2019 (**Greiner 1**) (ABFM 13) at [240]-[243], [353]-[354].

	Date	Event	Reference[1]	Evidence
				VGS20208896 (C-98) (CAB 12.505) (ABFM 10) at _8917.
9	From at least 2011	Ford and its suppliers (including Getrag and Continental) investigate problems in the Affected Vehicles, seeking to identify the causes of those problems. This involved the consideration of numerous potential root cases and redesign options.	PJ[222], [228], [344], [353], [355], [413]-[414], [467]-[473] (CAB 1.83, 85, 120, 123, 124, 142-143, 160-162)	Statement of Agreed Facts and Admissions filed in ACCC v Ford proceeding (ABFM 11). Affidavit of Christopher Kwasniewicz (ABFM 12). Greiner 1 (ABFM 13) at [240]-[243], [311], [330], [336]-[338], [346], [406(d)], [445]. VGS20090076 (C-97) (CAB 12.505) (ABFM 9). VGS20208896 (C-98) (CAB 12.505) (ABFM 10) at 8917.
10	Aug 2012	A document prepared by Mr Joseph Borneo, described as a master black belt in Ford's Transmission Driveline Engineering team, refers to a project within Ford US entitled "DPS6 NVH Task Force".	PJ[467]-[473] (CAB 1.160-162)	Greiner 1 (ABFM 13) at [304], [311], [330]. VGS20090076 (C-97) (CAB 12.505) (ABFM 9).

	Date	Event	Reference[1]	Evidence
11	From January 2012	A "DPS6 Lessons Learned Paper" is prepared, and updated over time. An August 2012 version records that: • "Architecture changes to DPS6 could address some of the fundamental short-falls of the dry dual clutch transmission" but "Not pursued in lieu of decision to invest in" a different transmission (citing the 19 October 2011 briefing materials) • "dry clutch power shift architecture has limitations that inhibit delivery of world class shift quality", and the "DPS6 architecture and design trade-offs are inhibitors to achieving BIC TGW" (best in class Things Gone Wrong rates); • the DPS6 has several issues that were "present throughout the development process"; • clutch judder on launch was due to "limited system damping"; • ruling out a dual mass flywheel was a "specific design tradeoff" to prioritise low cost and performance over "Good NVH".	PJ[486]-[487] (CAB 1.167)	Greiner 1 (ABFM 13) at [303], [311]. VGS20208896 (C-98) (CAB 12.505) (ABFM 10) at 8584, 8607.
12	26 Oct 2012	Ford releases Product Information Letter 06/12 to Australian dealers to support dealer staff in explaining the normal operating characteristics of the DPS6 transmission to customers.		Karageorgiou[3] (C-48) (CAB 12.501) at [37]-[39] and Annexure MK-1 (FOR.004.001.0159) (C-49) (CAB 12.501).
13	24 Dec 2012	Ms Capic purchases her vehicle, a 2012 Ford Focus Sport LW MKII, from Sterling Ford, Bundoora,	PJ[2], [65], [824], [855], [872]-[874],	Capic 2[4] (C-60) (CAB 12.502) at

[3] Affidavit of Michael Karageorgiou sworn on 1 October 2019 (FOR.758.001.2346__OBJ) (**Karageorgiou**).

[4] Second Affidavit of Biljana Capic affirmed on 7 June 2018 (CAP.102.001.0075_OBJ) (**Capic 2**).

	Date	Event	Reference[1]	Evidence
		Victoria 3083 for a purchase price of $22,736.36 (excluding GST, dealer delivery and other extras). The vehicle is financed by Alphera Financial Services, through a novated lease with Ms Capic's employer, for a period of 48 months. The total amount payable over the term of the finance contract is $40,971.52.	[877] (CAB 1.20, 40, 261, 270, 274-276)	[6], [24], [28]-[35]. Capic 3[5] (C-72) (CAB 12.503) at [23].
14	8 Jan 2013	A further iteration of the "DPS6 Lessons Learned Paper".	PJ[488] (CAB 1.167-8)	Greiner 1 (ABFM 13) at [303]. VGS7-0152977 (C-106) (CAB 12.506) at 2999.
15	26 Jan 2013	Ms Capic experiences problems with her vehicle almost immediately, including an incident where her vehicle shuddered while she was stopped at traffic lights.	PJ[538] (CAB 1.182-3)	Capic 2 (C-60) (CAB 12.502) at [36]-[37].
16	Apr 2013	Ford introduces the 250RPM test to identify 'excessive' shudder.	PJ[125] (CAB 1.57-8)	
17	29 May 2013	Ford delivers technical training to Service Technicians in Australian dealers regarding the normal operating characteristics of the DPS6 transmission.		Karageorgiou (C-48) (CAB 12.501) at [49].
18	14 Apr 2013	Ms Capic takes her vehicle to Sterling Ford for its 3,000km log book service.	PJ[535] (CAB 1.181)	Capic 2 (C-60) (CAB 12.502) at [39]-[44].
19	28 Jun 2013	Seals made from a different, more wear and heat resistant material (FKM 490) were implemented in production of Focus (1.6L and 2.0L) vehicles manufactured in Germany.	PJ[213] (CAB 1.81)	
20	Jul 2013	Ford implements sorting of clutches to reduce torque fluctuation in clutches in connection with B8080 material.	PJ[245] (CAB 1.90)	FOR.708.001.1432 (C-113) (CAB 12.506).

[5] Third Affidavit of Biljana Capic affirmed on 22 November 2019 (CAP.103.001.0001) (**Capic 3**).

	Date	Event	Reference[1]	Evidence
21	21 Aug 2013	A 6-Panel report (a further internal attempt by Ford US to investigate the issues being experienced in services by vehicles containing the DPS6) is prepared, investigating rough or jerky shifts, distinguishes between wet shudder, TCM defects and dry shudder. The report mentions that 50% of B8080 clutch material demonstrates self-excitation.	PJ[267], [270], [321], [344] (CAB 1.96, 97, 114, 120-1)	
22	20 Aug 2013	Ms Capic takes her vehicle to Jefferson Ford for its 15,000km log book service. After this service, Ms Capic feels the vehicle skipping gears, lacking acceleration or not accelerating at all, shuddering and vibrating on most occasions, and sometimes not able to be put into reverse.	PJ[535] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [45], [48] and Annexure BC-12 (C-61) (CAB 12.502).
23	30 Aug 2013 2 Sep 2013 1 Oct 2013	Revised input shaft seals (FKM material) available in production for: (a) Fiesta (1.0L, 1.5L and 1.6L) vehicles; (b) Focus (1.6L and 2.0L) vehicles manufactured in Thailand; (c) EcoSport vehicles. The FKM material was not an Effective Fix for CD1. An Effective Fix for CD1 was not achieved in production until late 2014 when the outer backing material was switched from rubber to steel. No finding as to when an Effective Fix for CD1 was available in the field.	PJ[213], [220] (CAB 1.81)	
24	8 Oct 2013	Ford issues Technical Service Bulletin (**TSB**) 14/13 to Australian dealers containing instructions for service technicians if a customer expressed concern about 'intermittent transmission clutch shudder on light acceleration from rest'. Service technicians were directed to run diagnostic testing (including the 250 RPM test), replace the input	PJ[312] (CAB 1.111)	Karageorgiou (C-48) (CAB 12.501) at [59].

	Date	Event	Reference[1]	Evidence
		shaft seals if necessary, and either clean or replace the clutch assembly.		
25	22 Nov 2013	Ford US and Getrag project, for "all global regions", a 36% failure rate for seals at 5 years/60,000 miles, and an 89% failure rate at 10 years/150,000 miles. The 5 year/60,000 miles failure rate of 36% comes to a total figure of USD475 million	PJ[228], [229] (CAB 1.85)	
26	23 Apr 2014	Ms Capic takes her vehicle to Jefferson Ford for its 30,000km log book service.	PJ[535] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [51] and Annexure BC-13 (C-62) (CAB 12.502).
27	19-20 May 2014	Ms Capic's vehicle is towed to Jefferson Ford for an unscheduled service after overheating. The radiator is replaced.		Capic 2 (C-60) (CAB 12.502) at [55]-[56] and Annexure BC-14 (C-63) (CAB 12.502).
28	23 Jun 2014	Revised ATIC91 chips available in production for Fiesta (1.0L, 1.5L and 1.6L) vehicles manufactured at the AutoAlliance plant in Thailand. Ford did not lead evidence as to when the revised ATIC91 chips were available in service.	PJ[376], [385] (CAB 1.131, 134)	
29	Jun to Jul 2014	Ford, Getrag and Continental convene a "joint team" at Continental's Deer Park facility to determine the root cause of solder cracks affecting the TCM. The joint team investigates numerous potential root causes and ultimately concludes that the primary root cause of the solder cracks between the ATIC 91 chips and the MAM is a mismatch between the "coefficient of	PJ[344]-[346], [413]-[415] (CAB 1.120-1)	

	Date	Event	Reference[1]	Evidence
		thermal expansion" (CTE) of the ATIC chip and PCB of the MAM. It also concludes that vibration was an accelerator to the solder cracks.		
30	24 Jul 2014	Ford releases the 14M01 Extended Warranty for certain Focus Fiesta and EcoSport vehicles manufactured between 2010 and 2013 in respect of the input shaft seals, clutch and transmission software calibration for 5 years or 160,000km. (At the time the general warranty was 3 years).	PJ[182] (CAB 1.72-3)	
31	1 Sep 2014	Around this time, Ms Capic receives a letter from Ford informing her of the 14M01 Extended Warranty.		Cruse[6] (C-52) (CAB 12.502) at [105]. Capic 2 (C-60) (CAB 12.502) at [58].
32	26 Sep 2014	After receiving the letter about Customer Satisfaction Program 14M01, Ms Capic takes her vehicle to Jefferson Ford to be serviced and complained that the vehicle shudders on acceleration. Shudder was found to be evident. The Transmission Control Module (**TCM**) receives a software update. After the service, the lack of power on acceleration in Ms Capic's vehicle worsens.	PJ[535], [538] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [58]-[63] and Annexure BC-16 (C-64 (CAB 12.502).
33	Oct to Nov 2014	Ford addresses the CTE mismatch in the ATIC 91 chips by changing its supplier from Texas Instruments ("TI") to ST Microelectronics ("ST"). The ATIC 91 chips from ST are constructed using a different "mold compound", which gives them a different (and more compatible) CTE.	PJ[370]-[372] (CAB 1.130-1)	

[6] Affidavit of Mark Cruse sworn on 1 October 2019 (FOR.758.001.1899_OBJ) (**Cruse**).

	Date	Event	Reference[1]	Evidence
34	Nov 2014	The outer backing material of inner input shaft seals was changed from rubber to steel for vehicles in production.	PJ[216], [220] (CAB 1.82-3)	
35	10 Nov 2014	Revised ATIC91 chips available in production for all Focus (1.6L and 2.0L) vehicles, all EcoSport vehicles, and Fiesta (1.0L and 1.5L) vehicles manufactured at the Ford manufacturing plant in Thailand.	PJ[376], [385] (CAB 1.131, 134)	
36	26 Nov 2014	Getrag presents on their investigation into leaking seals. An annotation to a slide on seal replacement data observes "FKM material solved a large warranty issue, but there is still existing warranty left over".	PJ[219] (CAB 1.83)	VGS7-0021823 (C-129) (CAB 12.507).
37	7 Jan 2015	Effective Fix for CD2 (revised clutch material (RCF1o)) was available in production for Fiesta (1.5L) vehicles. However, it was only available on a "fix on fail" basis in the field from around September 2016.	PJ[239(2)], [313], [684] (CAB 1.88, 111-2, 221)	
38	27 Feb 2015	Ms Capic takes her vehicle to Jefferson Ford for its 45,000km log book service.	PJ[535] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [64]-[65] and Annexure BC-16A (C-65) (CAB 12.502).
39	6 Mar 2015	Ms Capic takes her vehicle to Jefferson Ford for an unscheduled service due to a tyre puncture. The left hand side front and rear tyres are replaced.		Capic 1[7] (C-59) (CAB 12.502) at [12(g)].
40	13 Mar 2015	The Appellant issues TSB 15/07 to Australian dealers containing instructions for service technicians if a customer expressed concern about symptoms relating to 'no start and/or transmission engagement or loss of power'.		Cruse (C-52) (CAB 12.502) at [111]-[112].

[7] First Affidavit of Biljana Capic sworn on 19 April 2017 (CAP.104.001.1211) (**Capic 1**).

	Date	Event	Reference[1]	Evidence
		Service technicians were directed to run diagnostic testing and replace the TCM if the testing indicated a potential concern with any of the ATIC91 or ATIC106 chips.		
41	20 Mar 2015	By this time, Ford has undertaken a powertrain "Special Attention Review" into the DPS6 and, with Getrag, a "6-Sigma" investigation into a DPS6 concern described as "AT Shifts Rough or Jerky While Driving". The 6-Sigma investigation recognises that "Missing DMF" and "Powertrain Damping" were root causes of shudder for the DPS6, and that no actions were planned to address those root causes.		Expert report in reply of Dr Greiner (**Greiner 2**) (ABFM 15) at [139]. FOR.717.017.0001 (C-132) (CAB 12.508).
42	8 Apr 2015	Ms Capic's vehicle loses engine power while driving.	PJ[538] (CAB 1.182)	Capic 2 (C-60) (CAB 12.502) at [67].
43	7 May 2015	Ford releases the 14M02 Extended Warranty for certain Focus, Fiesta and EcoSport vehicles manufactured between 2010 and 2014 covering the TCM up to 240,000kms or 10 years.	PJ[182] (CAB 1.72-3)	Cruse (C-52) (CAB 12.502) at [115].
44	7 Oct 2015	Ms Capic takes her vehicle to Jefferson Ford for servicing following the engine light in her vehicle coming on. A backed out pin in Ms Capic's vehicle is refitted. After this service, the engine light came on multiple times. On one occasion, the light is accompanied by difficulty accelerating and shudder on a freeway, with an error message "Transmission overheating…".	PJ[535], [538] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [71]-[76] and Annexure BC-17 (C-66) (CAB 12.503).
45	27 Oct 2015	Ford issues Field Service Action 15B22 to Australian dealers, which instructed dealers to update the TCM in vehicles that presented for service with the 15B22 update.	PJ[379]-[380] (CAB 1.132-3)	
46	16 Nov 2015	Ms Capic takes her vehicle to Jefferson Ford for its 60,000km log book service.	PJ[535], [538] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [79] and

	Date	Event	Reference[1]	Evidence
		Nothing changes after this service, and the shaking, shuddering, skipping gears, lagging acceleration and grinding noise continued. Ford's repair records show that the dealer did not do a repair or offer a fix for the ATIC 91 or 106 chips, and simply gave her vehicle the 15B22 software update.		Annexure BC-18 (C-67) (CAB 12.503).
47	3 Dec 2015	Ford extends the operation of the 14M02 Extended Warranty to include certain Focus and Fiesta vehicles manufactured in 2015.	PJ[182] (CAB 72-3)	Nethercote[8] (C-56) (CAB 12.502) at [42(d)(i)].
48	16 Dec 2015	Ms Capic takes videos capturing the over-revving and mismatch of accelerator pressure, revs and acceleration she has been experiencing.	PJ[538] (CAB 1.182)	Capic 2 (C-60) (CAB 12.502) at [89]-[90].
49	16 Dec 2015	Ms Capic calls Ford's head office and speaks to someone about issues she is experiencing with her vehicle. This call is recorded in case notes kept by Ford's customer relationship centre.		Capic 2 (C-60) (CAB 12.502) at [91]. Capic 3 (C-72) (CAB 12.503) at [20](a). FOR.711.005.0001 (C-134) (CAB 12.508).
50	19 Jan 2016	Ms Capic calls Ford's customer relationship centre. She is advised that an allocated case manager will contact her soon.		Capic 2 (C-60) (CAB 12.502) at [94]. Capic 3 (C-72) (CAB 12.503) at [20](c). FOR.711.005.0001 (C-134) (CAB 12.508)

[8] Affidavit of Timothy Nethercote affirmed on 26 September 2019 (FOR.758.001.1755_OBJ) (**Nethercote**).

	Date	Event	Reference[1]	Evidence
51	2 Feb 2016	Ms Capic receives a call from Ford's customer relationship centre.		Capic 2 (C-60) (CAB 12.502) at [95]-[96]. Capic 3 (C-72) (CAB 12.503) at [20](d). FOR.711.005.0001 (C-134) (CAB 12.508).
52	3 Feb 2016	Ms Capic experiences an incident where her vehicle loses power on a freeway, and suddenly decelerates.	PJ[92]-[94] (CAB 1.48-9)	Capic 2 (C-60) (CAB 12.502) at [98]-[108].
53	4 Feb 2016	Ms Capic takes a video of her vehicle while driving home. The video shows that an [i] symbol and the engine light are on; a very brief flash of "Transmission hot | Wait…" that went off immediately; excessive revving; shortly afterwards, an error message that read "Transmission malfunction | Service now".		Capic 2 (C-60) (CAB 12.502) at [109]-[110].
54	10 Feb 2016	Ms Capic takes her vehicle to Jefferson Ford, complaining of the check engine light coming on and the vehicle lacking power. The TCM in her vehicle is replaced. Although this improves the driving experience a little, Ms Capic continues to experience over-revving on acceleration once or twice per day, and shuddering.	PJ[535], [538] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [111], [126] and Annexure BC-28 (C-68) (CAB 12.503). Capic 3 (C-72) (CAB 12.503) at [20]. CAP.100.001.0015 (C-135) (CAB 12.508). FOR.711.005.0001 (C-134) (CAB 12.508).
55	12 Feb 2016	Ms Capic calls Ford's customer relationship centre to make a complaint.		Capic 3 (C-72) (CAB 12.503) at [20](f).

	Date	Event	Reference[1]	Evidence
56	19 Feb 2016	Ms Capic has several calls with Ford's customer relationship centre. Ford makes an offer to Ms Capic, whereby she would contribute $15,442.83 toward a replacement vehicle on the basis that Ford had valued Ms Ca'ic's vehicle at $10,000, applied a discount of $3,920.51 and a new vehicle would cost approximately $24,990.91 (not including registration fees, insurance and stamp duty).		Capic 2 (C-60) (CAB 12.502) at [117]-[119]. Capic 3 (C-72) (CAB 12.503) at [20](h)-(i) (FOR.711.005.0001) (C-134) (CAB 12.508).
57	2 Mar 2016	Ms Capic receives a call from Ford's customer relationship centre.		Capic 3 (C-72) (CAB 12.503) at [20](j).
58	19 Mar 2016	Ms Capic takes her vehicle to Jefferson Ford, reporting shudder on acceleration. An adaptive relearn is performed on the TCM. After the service, the car was again not driving smoothly, and Ms Capic continued to experience a mismatch between the pressure she applied to the accelerator, the revving of the engine, and the acceleration of the car, as well as shuddering that was worse when she accelerated.	PJ[535], [538] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [127]-[129] and Annexure BC-33 (C-69) (CAB 12.503).
59	22 Apr 2016	Ford sends letters to owners of vehicles that had not received the 15B22 update, asking them to attend a dealer to have the 15B22 update applied.		Cruse (C-52) (CAB 12.502) at [137] and Annexure MC-28 (FOR.004.001.0049) (C-55) (CAB 12.502). DIRD.001.001.0035 (C-87) (CAB 12.505)
	May 2016	**Commencement of proceedings**		
60	17 May 2016	Ms Capic files Originating Application and Statement of Claim.		
61	24 Jun 2016	Ms Capic files Amended Statement of Claim.		

	Date	Event	Reference[1]	Evidence
62	29 Jun 2016	Ms Capic files Amended Originating Application.		
	Jul 2016-	**The problems continue**		
63	15 Jul 2016	Ms Capic takes her vehicle to Jefferson Ford for its 75,000km log book service. It was checked for shudder on acceleration and shudder was found to be evident. The TCM software is updated.	PJ[535], [538] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [130]-[131] and Annexure BC-34 (C-70) (CAB 12.503).
64	27 Jul 2016	Ford files Defence to Amended Statement of Claim.		
65	31 Aug 2016	Half-hybrid clutch (with B8080 clutch material on clutch 2 and a combination of B8080 and B8040 material on clutch 1) available in service for all Focus (1.6L and 2.0L) and EcoSport vehicles. Ford did not prove the application of the half-hybrid clutch in service in the field solved the problems with the B8080 material.	PJ[314]-[315] (CAB 1.112)	
66	3 Sep 2016	Half-hybrid clutch (with B8080 clutch material on clutch 2 and a combination of B8080 and B8040 material on clutch 1) available for EcoSport vehicles. Ms Capic did not prove vehicles produced with the half-hybrid clutch were not of acceptable quality. Ford did not prove that this material was an effective remedy in service for vehicles already on the road.	PJ[26], [314], [684], [784] (CAB 1.26, 112, 221, 239)	
67	9 Sep 2016	Ford issues TSB 16-2030 to Australian dealers containing instructions for service technicians if a vehicle exhibits excessive transmission clutch shudder on light acceleration and/or fluid leaking from the clutch housing. The TSB directed service technicians to, where necessary, replace the vehicle's clutch with the half-hybrid clutch (for Focus and EcoSport vehicles) or the RCF1o clutch (for Fiesta		Cruse (C-52) (CAB 12.502) at [143]-[146].

	Date	Event	Reference[1]	Evidence
		Vehicles) and to confirm that the 15B22 update had been applied.		
68	22 Sep 2016	Revised clutch material (RCF1o) available in service for Fiesta (1.5L and 1.6L) vehicles. The Trial Judge made no finding as to when this was applied in the field.	PJ[313] (CAB 1.111-2)	
69	Oct 2016	A final 14D report suggests that the problem of self-excited shudder further deteriorated over the life of the clutch.	PJ[321] (CAB 1.114)	
70	12 Oct 2016	Ms Capic files Further Amended Originating Application and Further Amended Statement of Claim.		
71	9 Nov 2016	Ford files Defence to Further Amended Statement of Claim.		
72	Dec 2016	A "DPS6 Update" records the following: • "DCT Architecture Constraints Remain After Other Improvements". One suggested limitation was "Lack of system damping contributes to NVH error states (grattle, rattle)". • "DMF not used leading to increased friction variability and reduced robustness to vehicle NVH."	PJ[490] (CAB 1.168)	FORD_DPS6-SAC_00056942 (C-138) (CAB 12.508).
73	15 Dec 2016	Ford extends the operation of the 14M01 Extended Warranty to 7 years or 160,000km and to additional Focus, Fiesta and EcoSport vehicles manufactured between 2013 and 2016. Where the vehicles had been sold with the improved input shaft seals this warranty was set at 5 years.	PJ[182] (CAB 1.72-3)	
74	15 Dec 2016	Ford releases Field Service Action 16P17 to Australian dealers encouraging dealers to contact owners of Focus (1.6L and 2.0L), Fiesta (1.0L, 1.5L and 1.6L) and EcoSport vehicles manufactured on specific dates between 2010 and 2015, that had previously had two or		Cruse (C-52) (CAB 12.502).

	Date	Event	Reference[1]	Evidence
		more clutch replacements but had not yet received a clutch with the revised clutch material (either RCF1o or the half-hybrid clutch) and to offer those owners a clutch replacement containing the revised clutch material applicable to their vehicle at no cost.		
75	23 Dec 2016	Ford extends the operation of the 14M02 Extended Warranty to include certain EcoSport vehicles manufactured in 2015.		Nethercote (C-56) (CAB 12.502) at [42(d)(ii)].
76	13 Apr 2017	Ms Capic receives a letter from Ford.		Capic 2 (C-60) (CAB 12.502) at [132].
77	2 May 2017	Ford extends the operation of the 14M02 Extended Warranty to include certain Fiesta and EcoSport vehicles manufactured between 2015 and 2016.	PJ[182] (CAB 1.72-3)	Cruse (C-52) (CAB 12.502) at [158].
78	30 May 2017	Ms Capic takes her vehicle to Jefferson Ford for its 90,000km log book service. Excessive shudder was found. The clutch assembly is replaced and the TCM is updated. Although the clutch replacement initially appears to fix the problem, Ms Capic experiences the same symptoms within two weeks.	PJ[535], [538] (CAB 1.181-2)	Capic 2 (C-60) (CAB 12.502) at [133]-[136] and Annexure BC-36 (C-71) (CAB 12.503) FOR.731.001.0025 (C-144) (CAB 12.509)
79	1 Sep 2017	Ms Capic experiences her vehicle shuddering and failing to accelerate quickly or at all, which makes executing right turns difficult.	PJ[538] (CAB 1.182)	Capic 2 (C-60) (CAB 12.502) at [140]
80	26 Apr 2018	In proceedings commenced in 2017 by the ACCC against Ford (Federal Court of Australia proceeding VID 821 of 2017), the ACCC and Ford file a Statement of Agreed Facts and Admissions.		Statement of Agreed Facts and Admissions filed in ACCC v Ford proceeding (C-236) (CAB 12.517) (ABFM 11).
81	24-25 May 2018	Ms Capic takes her vehicle to Jefferson Ford for its 105,000km log book service. She complained of shuddering on acceleration.	PJ[535], [540], [572] (CAB 1.181-2, 183, 191)	Capic 3 (C-72) (CAB 12.503) at [8]-[9] and Annexure BC-

	Date	Event	Reference[1]	Evidence
		Following the service, Ms Capic notices some improvements for about a week, before the shuddering and other problems return.		38 (C-73) (CAB 12.503).
82	25 May 2018	During a test drive of Ms Capic's vehicle, Mr Marston reports erratic gear change, lost power from standing start, hunting between gears, lag from take off, vehicle held acceleration when foot taken off throttle at 60km/hr and hard to select gear when vehicle cold.	PJ[588], [600] (CAB 1.195, 200)	
83	11 Jun 2019	Ms Capic takes her vehicle to Jefferson Ford for its 120,000km log book service. She complained of shudder on acceleration – worse going up hills. Shudder was found during the service. After the service, Ms Capic observes that the vehicle was fine for a couple of days, and then shuddering and other problems returned.	PJ[535], [540]-[542], [545] (CAB 1.181-2, 183, 184)	Capic 3 (C-72) (CAB 12.503) at [10]-[11] and Annexure BC-39 (C-74) (CAB 12.503).
84	16 Jul 2019	Ford issues a Service Manager's Letter and Dealer Confidential Bulletin to Australian dealers regarding the "DPS6 Powershift Transmission Diagnosis Process". The letter conveys the information that Ford had found that less than 5% of vehicles which dealers diagnosed as requiring a replacement in fact did require this, and cautioned that a vehicle failing the 250 RPM test was not determinative of there being a problem with the clutch.	PJ[186], [190] (CAB 1.73-4, 75)	Nethercote (C-56) (CAB 12.502) at [32]-[34] and Annexures TN-1 (FOR.743.001.0140) (C-57) (CAB 12.502).
85	12 Sep 2019	Ford extends the operation of the 14M01 Extended Warranty to cover certain EcoSport vehicles manufactured in 2013 that were not previously covered. As a result of this extension, the 14M01 Extended Warranty now applied to all Affected Vehicles.		Nethercote (C-56) (CAB 12.502) at [43(a)].

	Date	Event	Reference[1]	Evidence
86	12 Sep 2019	Ford releases the fourth supplement to the 15B22 program. Around this time Ford writes to customers who had not had the 15B22 update asking them to bring their vehicles in for service. Ford also releases Component Extended Warranty 19N07 for certain Focus, Fiesta and EcoSport vehicles to cover the TCM for six months from the repair order date for vehicles that received the 15B22 update pursuant to the fourth supplement to the 15B22 program.		Nethercote (C-56) (CAB 12.502) at [43(b)-43(c)] (FOR.004.001.0006) (C-54) (CAB 12.502)
87	1 Nov 2019	Ms Capic has an incident when reversing her vehicle. She is driving in a parking garage and needed to reverse backwards up the ramp into the carpark. She puts her vehicle into reverse gear, and suddenly the vehicle loses power and begins to roll down the ramp. It feels like the car did not recognise that she had put it in reverse gear.	PJ[540], [545] (CAB 1.183, 184)	Capic 3 (C-72) (CAB 12.503) at [17]
88	20 Feb 2020	Ms Capic files Fourth Further Amended Statement of Claim.		
89	**15 Jun 2020**	**Trial commences**		
90	19 Jun 2020	Ms Capic gives evidence on day 5 of the trial that she had driven her vehicle for seven and a half years and 136,000km.	T320.37-38	
91	29 Jun 2021	Reasons for judgment: *Capic v Ford Motor Company of Australia Pty Ltd* [2021] FCA 715.	CAB 1.1-302	
92	29 Jun 2021	Order of Perram J (regarding Ms Capic's tender list).	CAB 2.303-306	
93	13 Aug 2021	Order of Perram J (regarding Ms Capic's individual damages claim).	CAB 3.307-308	
94	3 Nov 2021	Reasons for judgment: *Capic v Ford Motor Company of Australia Pty Ltd (Revised Common Questions)* [2021] FCA 1320.	CAB 4.309-337	
95	18 Nov 2021	Order of Perram J (answers to common questions).	CAB 5.339-352	

	Date	Event	Reference[1]	Evidence
96	31 Jan 2022	Ford files Notice of Appeal to the Full Court of the Federal Court of Australia (**Full Court**).		
97	4 Feb 2022	Ms Capic files Notice of Contention in the Full Court.	CAB 8.383-385	
98	18 Mar 2022	Ms Capic files Notice of Cross-Appeal in the Full Court.		
99	12 May 2022	Ford files Notice of Contention (in answer to Cross-Appeal) in the Full Court.	CAB 9.387-389	
100	19 May 2022	Ford files Amended Notice of Appeal in the Full Court.	CAB 6.357-364	
101	20 Mar 2023	Full Court appeal hearing commences.		
102	27 Mar 2023	Ms Capic files Amended Notice of Cross-Appeal.	CAB 7.365-381	
103	14 Nov 2023	Reasons for judgment: *Ford Motor Company of Australia Pty Ltd v Capic* [2023] FCAFC 179.	CAB 10.391-472	
104	13 Dec 2023	Order of Yates, Beach and Downes JJ.	CAB 11.473-492	
105	13 Feb 2024	Order granting special leave to appeal to the High Court of Australia.	CAB 13.525-526	
106	16 Feb 2024	Ms Capic files Notice of Appeal in the High Court of Australia.	CAB 14.527-529	
107	26 Feb 2024	Ford files Notice of Contention in the High Court of Australia.	CAB 15.531-532	

Dated 8 March 2024

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