

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class action)
SUPERIOR COURT

No.: 500-06-001170-212

KARINE PEILLON

Applicant

v.

AUDI CANADA INC.

And

VOLKSWAGEN GROUP CANADA INC.

Respondents

**APPLICATION BY RESPONDENTS AUDI CANADA INC. AND
VOLKSWAGEN GROUP CANADA INC. FOR LEAVE TO ADDUCE
RELEVANT EVIDENCE AND EXAMINE THE APPLICANT
(Art. 574 al 3 C.C.P.)**

**TO THE HONORABLE CHRISTIAN IMMER S.C.J., RESPONDENTS AUDI CANADA
INC. AND VOLKSWAGEN GROUP CANADA INC. RESPECTFULLY SUBMIT AS
FOLLOWS:**

I. INTRODUCTION

1. On November 23, 2021, the Applicant instituted the present class action, which seeks to obtain a remedy for vehicle owners and lessors of various Audi vehicles. The Passenger Occupancy Detection System (“**PODS**”) is allegedly defective. On March 1, 2022, the Applicant filed an *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* (the “**Application for authorization**”);
2. The Respondents hereby request leave to adduce relevant evidence and examine the Applicant, on the grounds that the Respondents are deploying a recall correcting the issue at the heart of the Applicant’s proposed class action;
3. As appears from the Application for authorization, the Applicant is seeking authorization to institute a class action on behalf of the following class (the “**Class**”) (Application for authorization, par. 1):

All persons who purchased and/or leased one or more of the of the (sic) following Audi vehicles recalled under Transport Canada Recall # 2021-169 because of the defective Passenger Occupant Detection System (“PODS”) manufactured, distributed, supplied, wholesaled and/or imported by Audi:

- *Audi A3 (model years 2016 to 2020)*
- *Audi A3 E-TRON (model years 2016 to 2018)*
- *Audi RS3 (model years 2018 to 2020)*
- *Audi S3 (model years 2016 to 2020)*

(hereinafter the “Targeted Vehicles”)

4. The Applicant suggests the following issues of fact and law be dealt with collectively for the purposes of the proposed class action, as appears from pages 13 to 14 of the Application for authorization:
 - (a) Did the Defendants fail to satisfy the requirements of sections 37, 38, 39, 40, 41, 53, 215, 219, 220(a), 221(g), or 228 CPA, or of articles 1728-1730 CCQ?
 - (b) Did the Defendants commit a fault in relation to their recall program or otherwise fail to satisfy their obligations in that regard?
 - (c) Did the Defendants breach section 6 of the Quebec Charter?
 - (d) Are Class Members entitled to:
 - (i) a reduction of their obligations (or of the vehicle purchase price) and in what amount?
 - (ii) damages for trouble and inconvenience and in what amount?
 - (iii) moral damages and in what amount?
5. The Respondents respectfully submit that the proposed evidence and examination will enable this Court to make determinations as to whether the Applicant has an arguable case as required by section 575 (2) and (4) CCP and whether the claims of the Class members raise identical, similar or related issues of law or fact, as required by section 575 (1) CCP;

II. THE EVIDENCE THE RESPONDENTS SEEK TO ADDUCE

6. The Applicant alleges the recall is ineffective and that the Respondents are “not taking the situation seriously” (Application for authorization, par. 32-34);

7. These allegations are manifestly false and misleading;
8. The Respondents have deployed significant efforts to solve the alleged problem and provide a satisfactory solution to all vehicle owners and lessors under recalls 69-BY (Audi Canada Inc.) and 2021-169 (Transport Canada);
9. On or around December 16, 2021, the Respondents notified dealers that the final repair was available and provided instructions as to deployment, as appear from Audi Dealer Communication – Repair Available – Safety Recall 69BY, communicated in support hereof as **Exhibit R-1**;
10. The vehicle population for which the repair is available is the same as the one targeted by the proposed class action, as it appears from the Application for authorization at paragraph 1 and **Exhibit P-10**;
11. The Respondents are in the process of deploying a recall campaign and contacting vehicle owners to notify them that their Targeted Vehicle is eligible for repairs;
12. This fact was made apparent in the Applicant's latest amendment, in which she alleged that the recall has been performed on her vehicle (Application for authorization, par. 40.8-40.11);
13. The Respondents' proposed evidence is relevant because it will assist the Court in determining the scope of the putative class action, the targeted time-frame, as well as the remedies available to the Class;
14. Indeed, to the extent that the Applicant is at least in part relying on a cause of action based on loss of use (Application for authorization, par. 37) and seeking a reduction of her obligation (Application for authorization, par. 40), the existence of an effective recall is directly relevant to the assessment of the authorization criteria;
15. The Respondents are thereby seeking to adduce into evidence for the authorization hearing the following document:
 - Audi Dealer Communication – Repair Available – Safety Recall 69BY, as **Exhibit R-1**;
16. This Exhibit R-1 is completing Exhibit P-10 filed by Applicant;
17. In light of the fact that the recall of the Targeted Vehicles is currently being deployed, the Respondents ask this Court to reserve their rights to complete their relevant evidence closer to the authorization hearing;
18. The evidence the Respondents seek to adduce is sober, non-technical and limited to the indispensable and necessary for the purpose of authorization hearing;

III. LEAVE TO EXAMINE THE APPLICANT

19. The Applicant alleges, at length, various difficulties in trying to obtain a repair for her Targeted Vehicle (Application for authorization, par. 27-33);
20. The Applicant alleges having received the final repair (Application for authorization, par. 40.8-40.10);
21. The Application for authorization is, however, silent as to the Applicant's experience in relation to the final repair and the current state of her Targeted Vehicle;
22. Therefore, the Respondents are seeking leave to examine the Applicant on the recall deployed by the Respondents and its impact on the Applicant's vehicle;
23. The examination would not be longer than 45 minutes and would be limited to the following matter:
 - Steps taken and, if applicable, background and progress of work performed in connection with the PODS' replacement, in response to recall 69-BY (Audi Canada Inc.)/2021-169 (Transport Canada);
24. The present Application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

- A. **GRANT** the present *Application by Respondents Audi Canada Inc. and Volkswagen Group Canada Inc. for Leave to Adduce Relevant Evidence and Examine the Applicant*;
- B. **ALLOW** Respondents Audi Canada Inc. and Volkswagen Group Canada Inc. to file the following Exhibit into the Court record:
 - a. Audi Dealer Communication – Repair Available – Safety Recall 69BY, as **Exhibit R-1**;
- C. **ALLOW** Respondents Audi Canada Inc. and Volkswagen Group Canada Inc. to examine Applicant Karine Peillon, for no longer than 45 minutes, on the following matter:
 - a. Steps taken and, if applicable, background and progress of work performed in connection with the PODS' replacement, in response to recall 69-BY (Audi Canada Inc.)/2021-169 (Transport Canada);
- D. **RESERVE** Audi Canada Inc. and Volkswagen Group Canada Inc. right to submit the exhibits and documents produced during the examination of Applicant Karine Peillon or as undertakings, in whole or in part, as evidence at the authorization hearing;

E. **THE WHOLE** without legal costs.

Montréal, March 16, 2022

Borden Ladner Gervais

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APPLICATION BY RESPONDENTS AUDI CANADA INC. AND VOLKSWAGEN GROUP CANADA INC. FOR LEAVE TO ADDUCE RELEVANT EVIDENCE AND EXAMINE THE APPLICANT (ART. 574 AL 3 C.C.P.), LIST OF THE EXHIBIT COMMUNICATED WITH THE APPLICATION BY RESPONDENTS AUDI CANADA INC. AND VOLKSWAGEN GROUP CANADA INC. FOR LEAVE TO ADDUCE RELEVANT EVIDENCE AND EXAMINE THE APPLICANT AND EXHIBIT R-1

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