

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

(Class action)  
SUPERIOR COURT

No.: 500-06-001216-239

**GABRIEL HAVIERNICK**

Applicant

v.

**VOLKSWAGEN GROUP CANADA INC.**

and

**AUDI CANADA INC.**

Respondents

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**APPLICATION BY RESPONDENTS VOLKSWAGEN GROUP CANADA  
INC. AND AUDI CANADA INC. FOR LEAVE TO EXAMINE THE  
APPLICANT (ART. 574 AL 3 C.C.P.)**

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**TO THE HONORABLE MARIE-CHRISTINE HIVON S.C.J., RESPONDENTS  
VOLKSWAGEN GROUP CANADA INC. AND AUDI CANADA INC. RESPECTFULLY  
SUBMIT AS FOLLOWS:**

**I. INTRODUCTION & CONTEXT**

1. On January 24, 2023, the Applicant instituted the present class action, which aims to obtain a remedy for vehicle owners and lessors of various Volkswagen and Audi vehicles. The Applicant alleges that the turbocharger's wastegate of these vehicles is defective (the "**Application for authorization**");
2. The Respondents hereby request leave to examine the Applicant, on the grounds that the Application for authorization contains factual voids, that it would assist the Court and the Respondents in acquiring a better understanding of the factual situation, and that the examination sought is essential to the assessment of the authorization criteria under article 575 CCP;
3. The Applicant is seeking authorization to institute a class action on behalf of the following class (the "**Class**") (Application for authorization, par. 1):

*Toute personne physique, personne morale de droit privée, société ou association qui est ou était propriétaire au Québec d'un véhicule de marque Volkswagen ou Audi équipé d'un moteur turbo de modèle et années suivantes :*

*Volkswagen Tiguan, Atlas, Golf, Jetta, Beetle, GTI 2015-2020*

*et*

*Audi A3, A4, A5, Q3, Q5 2015-2020*

(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 20-21 of the Application for authorization:
- (a) Est-ce que les problèmes de la soupape de recharge dans ces véhicules constituent un vice caché?
  - (b) Si oui, est-ce que ce vice affecte la durabilité raisonnable du turbocompresseur?
  - (c) Si oui, est-ce que les défenderesses sont responsables de ce défaut en vertu de la *Loi sur la protection du consommateur* et en vertu du *Code civil du Québec*?
  - (d) Est-ce que les membres du groupe ont le droit au remboursement des frais encourus pour la réparation du turbocompresseur?
  - (e) Est-ce que les membres du groupe qui ont reçu une contribution partielle de VW ou Audi Canada au coût de la réparation ont le droit au remboursement des frais encourus pour la réparation du turbocompresseur?
  - (f) Est-ce que les membres du groupe qui n’ont pas fait réparer leur véhicule ont le droit à des dommages compensatoires équivalents au coût des réparations?
  - (g) Est-ce que les membres du groupe ont le droit aux dommages-intérêts occasionnés par le défaut de fabrication du turbocompresseur de leur véhicule?
  - (h) Est-ce que les membres du groupe ont le droit à une prolongation de la garantie sur le turbocompresseur jusqu’à 10 ans ou 200 000 km?
  - (i) Est-ce que les membres du groupe, qui se qualifient comme consommateurs, ont droit à des dommages punitifs à raison de 300,00 \$ par Membre de la part des défenderesses?
5. The Respondents respectfully submit that the proposed examination will enable this Court to make determinations as to whether the Applicant has an arguable cause of action pursuant to 575(2) and (4) CCP and as to the existence and scope of the putative class pursuant to 575(1) and (3) CCP. More specifically, the Respondents are seeking leave to examine the Applicant on the following themes:

- (a) The context and progress of the work carried out in connection with the general service history and repair of the Applicant's vehicle;
- (b) The content of Exhibit P-5 and background information associated with this exhibit; and
- (c) The alleged "admission" mentioned at paragraphs 76-77 of the Application for authorization.

## **II. LEAVE TO EXAMINE THE APPLICANT**

### **A. General Service History and Repairs**

- 6. At paragraph 56 of the Application for authorization, the Applicant asserts that he performed maintenance work on his vehicle, presenting certain invoices as evidence (Exhibit P-13);
- 7. However, this allegation warrants an examination of the Applicant, as the invoices included in Exhibit P-13 do not provide sufficient evidence for the Court and the Respondents to validate this claim;
- 8. We notably see in one of the invoices that the Applicant refused to perform the manufacturer-recommended maintenance repairs, despite the fact that he was compelled to do so pursuant to his lease contract;
- 9. Considering that this is a product liability claim, it is important to know what are the frequency, period, and all the reasons for maintenance (or lack thereof) of the Applicant's vehicle;
- 10. In addition, as per paragraphs 63-66 of the Application for authorization, the Applicant claims to have been unable to contact Volkswagen Group Canada Inc. for the purpose of his first repair. A clarification is particularly required considering that he apparently reached Volkswagen Group Canada Inc. seemingly easily for the purpose of the second repair;
- 11. As for the repair mentioned at paragraph 68, the Application for authorization and the evidence in support thereof provide insufficient information regarding the part that was installed in the Applicant's vehicle. For instance, the Applicant indicates that this part was used, but does not allege that the part was distributed or manufactured by the Respondents nor does he provide details on the state of the part or the vehicle at the time the part was retrieved;
- 12. Lastly, considering that both repairs were executed outside of the Respondents' dealership network, it is essential to know the context of the repairs and what was done exactly;
- 13. All these elements demonstrate the usefulness and necessity to examine the Applicant for the assessment of his personal cause of action pursuant to article

575(2) CCP and his status as an adequate representative plaintiff pursuant to 575(4) CCP. Accordingly, an examination on these topics is not only helpful but also essential for the purpose of assessing these authorization criteria;

**B. Exhibit P-5 and the Scope of the Class**

14. The scope of the class action is critically related to the criteria under article 575(1) and (3) CCP. The Court must be satisfied that there is a group represented by the representative plaintiff and that said group is appropriately defined;
15. While the Applicant owns a 2015 Volkswagen Golf 1.8 L, the proposed Class is wider in terms of Targeted Vehicles. There are 11 different vehicles for a total of 66 model years;
16. As per the Application for authorization, paragraphs 41 and 101, the primary supporting evidence justifying the scope of the Class is Exhibit P-5, which is a simple table allegedly surveying turbocharger wastegate failures;
17. The Applicant provided no supporting documentation or context in relation to Exhibit P-5. The Court and the Respondents do not know how the Applicant obtained this information, how the table was created, what data sets or samples were considered or the reliability of the information upon which it is based;
18. This table does not support the claim for such a wide class;
19. Accordingly, and in order to assess the appropriateness of the proposed class, the Respondents should be granted leave to examine the Applicant on these points;

**C. Alleged “Admission” Mentioned at paragraphs 76-77**

20. At paragraph 76 of the Application for authorization, the Applicant alleges that a representative of the Volkswagen Group Canada Inc. allegedly said that “*le turbo va lâcher encore puisque la configuration et les pièces du turbo n’ont pas été améliorées*”;
21. The Applicant relies on this “admission” to suggest that the Respondents are aware of general problem affecting the turbo, as mentioned at paragraph 77 of the Application for authorization;
22. The Respondents strongly dispute this purported “admission”, which is self-serving, gratuitous and unsubstantiated, as the Applicant fails to allege the specific circumstances of the conversation, the identity of his correspondent, and the overall content of the conversation;
23. The Applicant entertains a factual void around an allegation of the Application for authorization, which ought to be clarified for the benefit of the Court and the Respondents;

**D. Modalities of the Proposed Deposition**

24. The examination would be no longer than 1.5 hours, could be held by videoconference if preferred by the Applicant, and would be limited to the above-stated matters;
25. 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 Volkswagen Group Canada Inc. and Audi Canada Inc. for leave to examine the Applicant*;
- B. ALLOW** Respondents Audi Canada Inc. and Volkswagen Group Canada Inc. to examine Applicant Gabriel Haviernick, for no longer than 1.5 hours, on the following themes:
- (a) The context and progress of the work carried out in connection with the general service history and repair of the Applicant's vehicle;
  - (b) The content of Exhibit P-5 and background information associated with this exhibit; and
  - (c) The alleged "admission" mentioned at paragraphs 76-77 of the Application for authorization.
- C. THE WHOLE** without legal costs.

Montreal, August 3, 2023

*Borden Ladner Gervais*

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O/File: 289824.000519

## Bates-Guay, Heidi

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**De:** Bates-Guay, Heidi  
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**À:** fadams@adamsavocat.com; fleblanc@adamsavocat.com  
**Cc:** Merminod, Anne; Leray, Alexis; Descheneaux, Annie  
**Objet:** NOTIFICATION N/D 289824-000519 Gabriel Haviernick c. Volkswagen Group Canada inc. et Audi Canada inc.  
**Pièces jointes:** 2023-08-03 Application by respondents for leave to examine the applicant.pdf

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	Descheneaux, Annie	Remis: 2023-08-03 3:42 PM	

### **BORDEREAU DE NOTIFICATION PAR COURRIER ÉLECTRONIQUE** (ARTICLE 134 C.P.C.)

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**DATE :**  
Montréal, le 3 août 2023

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**NUMÉRO DE DOSSIER DE COUR ET NATURE DU DOCUMENT NOTIFIÉ :**

**Numéro de dossier :** 500-06-001216-239  
**Parties :** Gabriel Haviernick c. Volkswagen Group Canada inc. et Audi Canada inc.  
**Nature du document :** **Application by respondents Volkswagen Group Canada inc. and Audi Canada inc. for leave to examine the applicant**

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**Nombre de pages :** **6 pages**  
(pièces jointes seulement)



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DISTRICT OF MONTRÉAL  
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**GABRIEL HAVIERNICK**

Plaintiff

v.

**VOLKSWAGEN GROUP CANADA INC.**

Defendant

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**AUDI CANADA INC.**

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(Art. 574 al.3 C.C.P.)**

ORIGINAL

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