

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N<sup>o</sup> : 500-06-000764-155

SUPERIOR COURT  
(Class Action)

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ALEX ST-ONGE, [REDACTED]  
[REDACTED]

*Petitioner*

-vs-

VOLKSWAGEN AG., [REDACTED]  
[REDACTED];

-and-

VOLKSWAGEN, [REDACTED]  
[REDACTED]

-and-

VOLKSWAGEN GROUP CANADA INC., [REDACTED]  
[REDACTED]

-and-

AUDI AG, [REDACTED]  
[REDACTED]

-and-

AUDI CANADA [REDACTED]  
[REDACTED].

*Respondents*

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**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE  
THE STATUS OF REPRESENTATIVE  
(Art. 1002 C.C.P. and following)**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER  
STATES THE FOLLOWING:**

**GENERAL PRESENTATION**

1. The Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- All residents in Quebec who own or have owned, or lease or have leased, one or more of the following vehicles:

- Volkswagen Jetta, model years 2009 through 2015;
- Volkswagen Golf, model years 2010 through 2015;
- Volkswagen Beetle, model years 2013 through 2015;
- Volkswagen Passat, model years 2012 through 2015;
- Volkswagen Golf Wagon/Sportwagon, model years 2009 through 2015; and,
- Audi A3, model years 2010 through 2015

(hereinafter, referred to as “**Class Vehicles**” or “**Subject Vehicles**”)

(hereinafter, referred to as “Class Member(s)”, “Group Member(s)”, the “Group”, the “Class”, the “Member(s)”);

### The Respondents

2. The Respondent, Volkswagen A.G., is a German multinational automotive manufacturing company headquartered in Wolfsburg, Lower Saxony, Germany. It designs, manufactures and distributes passenger and commercial vehicles, motorcycles, engines, and turbomachinery and offers related services including financing, leasing and fleet management. Volkswagen A.G. conducts business in Canada, including in Quebec;
3. The Respondent, Volkswagen, is a German car manufacturer headquartered in Wolfsburg, Lower Saxony, Germany. Established in 1937, Volkswagen is a wholly subsidiary of Volkswagen A.G. and conducts business in Canada, including in Quebec;
4. The Respondent, Volkswagen Group Canada Inc. ("**Volkswagen Canada**") is the Canadian subsidiary of Volkswagen, A.G. and is headquartered at [REDACTED] Canada. Volkswagen Canada conducts business in Canada, including in Quebec;
5. The Respondent, Audi AG, is a German car manufacturer headquartered in Germany. Audi AG is a wholly owned subsidiary of Volkswagen A.G. and conducts business in Canada, including in Quebec;
6. The Respondent, Audi Canada, is the Canadian subsidiary of Audi AG, and is headquartered at [REDACTED] Canada. Audi Canada conducts business in Canada, including in Quebec;
7. Volkswagen A.G., Volkswagen, Volkswagen Canada, Audi AG, and Audi Canada (hereinafter the "**Respondents**" or simply "**Volkswagen**") shared the common purpose of designing, testing, manufacturing, marketing, sales, and distribution of the Class Vehicles in Canada;

8. Each of the Respondents acted in concert with the others in an organized and coordinated fashion;
9. Each of the Respondents were a part of one worldwide corporate entity acting together and in common ways;
10. Each created and executed a common business plan to manufacture and sell their vehicles in Quebec, in Canada, and throughout the world;
11. The business and interests of the Respondents are inextricably interwoven, therefore, all Respondents are solidarily liable for the acts and omissions of the other;
12. Neither the Petitioner nor Class Members could reasonably be expected to know which of the Respondents has committed which individual wrong because the Respondents work secretly and collectively but each is responsible for the wrongdoing of the other;

General Facts:

13. At all material times, the Respondents tested, manufactured, marketed, sold, distributed the Class Vehicles;
14. Volkswagen marketed its diesel-powered cars, including the Class Vehicles, which account for about 25 per cent of sales, as being better for the environment;
15. Volkswagen made representations to the Petitioner, to the Class, and to government regulatory bodies as to the cleanliness and emissions levels of the Class Vehicles which it knew or ought to have known were incorrect, deceptive, and misleading;
16. On September 18, 2015, it was revealed that Volkswagen had rigged U.S. emissions tests for about 500,000 diesel cars;
17. Evidence of increased toxic emissions at Volkswagen first emerged in 2014, prompting the California Air Resources Board (CARB) to start investigating

Volkswagen;

18. According to reports from the U.S. Environmental Protection Agency (“EPA”), Volkswagen initially denied it was trying to game the inspections, attributing the higher emissions readings to “various technical issues and unexpected in-use conditions”;
19. The stonewalling continued until the EPA threatened to withhold certification for Volkswagen’s 2016 models;
20. Volkswagen then admitted it had designed and installed a “defeat device” that purposely lowered emissions while it was being inspected;
21. The “defeat device” would sense whether the vehicle was presently subject to an emissions test, by tracking various parameters (including the position of the steering wheel, vehicle speed, the duration of the engine’s operation, and barometric pressure). If the “defeat device” determined that an emissions test was underway, the vehicles’ computer would adjust its operational parameters to produce more favourable emissions readings;
22. During regular driving, a higher-performing calibration would be used, boosting the car’s performance, and resulting in emissions levels that were much higher than testing would suggest;
23. Volkswagen has admitted that it had designed and installed this “defeat device”;
24. The Petitioner and Group Members generally could not have known of the presence of the “defeat device” as this was built in to the Class Vehicles’ computer code and no physical or operational difference could be seen or observed during ordinary driving of the cars;
25. This admission has drawn significant media attention, and the credibility of Volkswagen in the marketplace has been negatively impacted as a result;
26. On or about September 22<sup>nd</sup>, 2015, Volkswagen Canada issued a “stop sale” order on the Class Vehicles;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

27. The Petitioner, Alex St-Onge, is a resident of Montreal, Quebec;
28. In April 2015, the Petitioner purchased a 2015 Jetta TDI Highline (the “**Petitioner’s Vehicle**”);
29. The Petitioner purchased the diesel model, paying a premium, because he was misled into believing that it would be more environmentally-friendly;
30. The Petitioner did not know, and could not have known, that the Petitioner’s Vehicle included an emissions “defeat device”;
31. The Petitioner is aware that the negative press and publicity that Volkswagen is receiving over the use of secretive and deceptive “defeat devices” will decrease the value of his vehicle and make it more difficult for him to sell his vehicle in the future;
32. The Petitioner is dissatisfied with the quality of the Petitioner’s Vehicle as purchased;
33. The damages suffered by the Petitioner are a direct and proximate result of the Respondents’ conduct;
34. As a consequence of the foregoing, the Petitioner is justified in claiming damages;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

35. Every Member of the Group owns, leases or otherwise possesses one of the motor vehicles comprised in the Class Vehicles;
36. Each Member of the Group is justified in claiming at least one or more of the following:

- a) Resiliation of the sale or lease of the Vehicle and reimbursement of the purchase price or lease amounts paid, including but not limited to taxes, license and registration fees, security deposit, down payment, etc., or subsidiarily, damages for the diminished value (or resale value) of the Class Vehicles;
  - b) Damages for the premium paid in order to have the diesel model;
  - c) Damages for the costs associated with the defects or repairs to the Class Vehicles;
  - d) Damages for loss of use and enjoyment of their Class Vehicles;
  - e) Damages for trouble, inconvenience and loss of time;
  - f) Damages for anxiety and fear;
  - g) Punitive and/or exemplary damages;
37. All of these damages to the Group Members are a direct and proximate result of the Respondents' conduct;

### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

**The composition of the group makes the application of Article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below:**

38. The number of persons included in the Group is estimated to be in the thousands. While the Petitioner does not know the full extent of the size of the Class, on September 22<sup>nd</sup>, 2015, Volkswagen Canada estimated that at least 10,000 new Class Vehicles had been sold in Canada between January 1, 2015 and August 31, 2015;
39. The names and addresses of all persons included in the Group are not known to the Petitioner but are known to the Respondents;

40. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Respondents. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the Court system;
41. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
42. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Group to effectively pursue their respective rights and have access to justice;

**The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:**

43. The recourses of the Group Members raise identical, similar or related questions of fact or law, namely:
  - a) Is there a latent defect in the Class Vehicles?
  - b) Did the Respondents make misleading representation relating to the emissions of the Class Vehicles?
  - c) Did the Respondents know or should the Respondents have known about these defects affecting the Class Vehicles?
  - d) Did the Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Class Vehicles, or thereafter?
  - e) Have the Group Members suffered damages as a result of the defect in question?



- f) Are the Respondents liable to pay compensatory damages to Group Members stemming from the defect?
  - g) What are the categories of damages for which the Respondents are responsible to pay to Group Members, and in what amount?
  - h) Are Respondents liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?
44. The interests of justice favour that this motion be granted in accordance with its conclusions;

#### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

45. The action that the Petitioner wishes to institute for the benefit of the members of the Class is an action in damages for latent defect;
46. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** Plaintiff's action against Defendants;

**DECLARE** that the Defendants made misleading representations relating to the emissions of the named vehicles;

**DECLARE** that the misleading representations constituted a fault;

**DECLARE** that the Defendants are liable for the misleading representations;

**ORDER** the rescission of the sale or lease of the Class Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by

Group Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Group Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class pursuant to s. 36 of the *Competition Act* and to s. 272 of the *Consumer Protection Act*, in such sum as the Court finds appropriate for all monetary losses;

**CONDEMN** Defendants to reimburse to the Group Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Group Members for the loss of use and enjoyment of the Class Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

47. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Many Group Members, including the Petitioner, are domiciled in the District of Montreal;
  - b) Many of the Class Vehicles were purchased or leased by Class Members in District of the Montreal;
  - c) The Petitioner's counsel is domiciled in the District of Montreal;
48. The Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:
- a) owns a 2015 Jetta TDI Highline, which is affected by the defect alleged above, and is thus a Member of the Group;
  - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
  - c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
  - d) is ready and available to manage and direct the present action in the interest of the Group Members that the Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
  - e) does not have interests that are antagonistic to those of other members of the Group;

- f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
- g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

49. The present motion is well-founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the Group herein described as:

All residents in Quebec who own or have owned, or lease or have leased, one or more of the following vehicles:

- Volkswagen Jetta, model years 2009 through 2015;
- Volkswagen Golf, model years 2010 through 2015;
- Volkswagen Beetle, model years 2013 through 2015;
- Volkswagen Passat, model years 2012 through 2015;
- Volkswagen Golf Wagon/Sportwagon, model years 2009 through 2015; and,
- Audi A3, model years 2010 through 2015;

(hereinafter, referred to as “**Class Vehicles**” or “**Subject Vehicles**”)

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Is there a latent defect in the Class Vehicles?
- b) Did the Respondents make misleading representation relating to the emissions of the Class Vehicles?
- c) Did the Respondents know or should the Respondents have known about these defects affecting the Class Vehicles?
- d) Did the Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Class Vehicles, or thereafter?
- e) Have the Group Members suffered damages as a result of the defect in question?
- f) Are the Respondents liable to pay compensatory damages to Group Members stemming from the defect?
- g) What are the categories of damages for which the Respondents are responsible to pay to Group Members, and in what amount?
- h) Are Respondents liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**DECLARE** that the Defendants made misleading representations relating to the emissions of the named vehicles;

**DECLARE** that the misleading representations constituted a fault;

**DECLARE** that the Defendants are liable for the misleading representations;

**ORDER** the rescission of the sale or lease of the Class Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Group Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Group Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class pursuant to s. 36 of the *Competition Act* and to s. 272 of the *Consumer Protection Act*, in such sum as the Court finds appropriate for all monetary losses;

**CONDEMN** Defendants to reimburse to the Group Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Group Members for the loss of use and enjoyment of the Class Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in

accordance with articles 1037 to 1040 C.C.P.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

**DECLARE** that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

**ORDER** the publication of a notice to the Members of the Group in accordance with Article 1006 C.C.P.;

**THE WHOLE** with costs to follow.

**MONTREAL, September 22, 2015**

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**MERCHANT LAW GROUP LLP**

Attorneys for the Petitioner

