

CANADA
PROVINCE OF QUEBEC
DISTRICT OF LAVAL

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)

No.: 540-06-000012-155

F [REDACTED] CONSTRUCTION INC.,
a legal person duly constituted
according to the Law, having its head
office at [REDACTED]
[REDACTED]

Petitioner

vs.

PORSCHE CARS CANADA, LTD., a
legal person duly constituted according
to the Law, having its elected domicile
(*domicile élu*) and *fondé de pouvoir* at
600-1134 Grande Allée Ouest, in the
City and District of Quebec, Province of
Quebec, G1S 1E5;

-and-

**PORSCHE ENTERPRISES
INCORPORATED**, a legal person duly
constituted according to the Law, having
its head office at One Porsche Drive,
Atlanta, GA, 30354, U.S.A.;

-and-

**PORSCHE CARS NORTH AMERICA,
INC.**, a legal person duly constituted
according to the Law, having its head
office at 980 Hammond Drive, Suite
1000, Atlanta, GA, 30328, U.S.A.;

-and-

PORSCHE AG, a legal person duly constituted according to the Law, having its head office at Dr. Ing. h.c. F. Porsche AG, Porscheplatz 1 D - 70435 Stuttgart, Germany;

Respondents

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

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

Introduction:

1. Petitioner wishes to institute a class action on behalf of the following Group of which Petitioner is a member:

All residents of Canada (or subsidiarily Quebec), who own or lease a Porsche Cayenne Diesel equipped with a 3.0 liter engine, or any other Group(s) or Sub-Group(s) to be determined by the Court;

(hereinafter referred to as the "**Petitioner(s)**", the "**Class Member(s)**", the "**Class**", the "**Group Member(s)**", the "**Group**");

2. Respondent Porsche Cars Canada, Ltd., which is domiciled in Mississauga, Province of Ontario but which has elected domicile in the Province of Quebec, markets, distributes and sells Porsche vehicles including the Porsche Cayenne Diesel sport utility vehicles (SUVs), in Quebec and across Canada, the whole as more fully appears from the CIDREQ report regarding Porsche Cars Canada, Ltd., and from various contact information extracts from its website, communicated herewith, *en liasse*, as **Exhibit R-1**;

3. Respondent Porsche Enterprises Incorporated, is a legal person constituted pursuant to the laws of Delaware, U.S.A., and is the majority shareholder of Respondent Porsche Cars Canada, Ltd., the whole as more fully appears from the Exhibit R-1 CIDREQ report and the Georgia Corporations Division report regarding said Respondent, communicated herewith as **Exhibit R-2**;
4. Respondents Porsche Cars North America, Inc. and Porsche AG are the U.S. and German entities (respectively), related to Respondent Porsche Cars Canada, Ltd.'s activities in Canada, as appears from the Exhibit R-1 website extracts, and they are the entities who received the EPA notice of violation and issued the news releases mentioned below, announcing the cease sale order regarding all North American sales of the Porsche Cayenne Diesel models, as more fully detailed hereinbelow;
5. All Respondents were collectively involved in the promotion, marketing, distribution, lease, and/or sale of the Porsche Cayenne Diesel vehicles in North America and are collectively referred to herein as either **"Respondents"** or **"Porsche"**;
6. At all material times, Porsche marketed, promoted, distributed, leased and sold the Porsche Cayenne Diesel vehicles throughout Canada, including in the Province of Quebec;

The situation:

3. Since late 2012 (with the introduction of the 2013 model), Respondents have marketed, promoted, distributed, leased and sold the Porsche Cayenne Diesel SUVs (hereinafter referred to as the **"Cayenne Diesel"**) to Class Members, which were equipped with a defeat device permitting the vehicle to cheat emission tests, the whole without the knowledge or consent of the Class Members;

4. The Class Members have and/or will suffer a significant decrease in value (and/or resell value) of their Cayenne Diesel in light of this discovery, as their vehicles will no longer perform as advertised;
5. Respondents were, at all material times, the sole distributor of the Diesel Cayenne in Canada. They sold the model through dealers and retailer networks;
6. The 2013 Cayenne Diesel contains the same engine as the 2014 and 2015 Cayenne Diesel models, the whole as more fully appears from the 2013, 2014, and 2015 technical specifications sheets, communicated herewith, as though recited at length herein, as **Exhibit R-3**;
7. On November 3, 2015, Porsche announced via news release that it will be stopping North American sales of the Cayenne Diesel, the whole as more fully appears from the November 3, 2015 news release and from a Globe and Mail article published on November 4, 2015, communicated herewith, as though recited at length herein, as **Exhibit R-4, en liasse**;
8. This stop-sale announcement was made one (1) day following the issuance of a Notice of Violation (hereinafter the "**NOV**") by the United States Environmental Protection Agency (hereinafter the "**EPA**"), on November 2, 2015, after the EPA discovered that the 2015 Cayenne Diesel vehicles (as well as other Volkswagen and Audi 3.0 liter engine vehicles) contained a "defeat device" allowing the vehicle to cheat emissions tests, the whole without the knowledge and consent of its customers, the whole as more fully appears from the EPA Notice of Violation, communicated herewith, as though recited at length herein, as **Exhibit R-5**;

9. Porsche acknowledged the receipt of the notice that same day and confirmed the full cooperation with the EPA investigation, the whole as more fully appears from Porsche's news release dated November 2, 2015, communicated herewith, as though recited at length herein, as **Exhibit R-6**;
10. On or about September 18, 2015, the EPA issued a first NOV to various companies included in the Volkswagen Group of companies, detailing how sophisticated software were installed in some models of Volkswagen and Audi diesel vehicles equipped with a 2.0 liter engine, that detect when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the tests. At all other times that the vehicles in question were in operation, the emissions controls were deactivated, permitting pollution to be freely released into the environment at levels that far exceed those allowed by Canadian emission laws and standards, the whole without the knowledge and consent of its customers, the whole as more fully appears from the September 18, 2015 EPA Notice of Violation, communicated herewith, as though recited at length herein, as **Exhibit R-7**;
11. On September 20, 2015, the CEO of Volkswagen AG, Prof. Dr. Martin Winterkorn, admitted to these facts and apologized stating: "I personally am deeply sorry that we have broken the trust of our customers and the public", the whole as more fully appears from the September 20, 2015 statement communicated herewith, as though recited at length herein, as **Exhibit R-8**;
12. Despite Volkswagen's acknowledgement of installing defeat devices in certain models, it never informed the EPA nor the public that other vehicles sold by its group of companies, including without limitation the Cayenne Diesel, also contained the defeat device software, the whole considering that the Porsche Respondents herein are part of the Volkswagen Group of companies, ultimately owned and/or managed by Volkswagen AG in

Germany;

13. As appears from the EPA's September 18, 2015 NOV, Exhibit R-7, the vehicles would pollute the environment at levels ranging from ten (10) to forty (40) times higher than when the defeat device was activated, which as mentioned was only activated during emission testing;
14. The Cayenne Diesel is equipped with a defeat device / software, rendering its emission levels illegal, highly harmful for the environment, and/or not in conformity with the environmental parameters and the representations made by Porsche when distributing the vehicles to the Class Members;
15. As appears from various Cayenne Diesel brochures, Respondents marketed and advertises that it has created a vehicle offering outstanding performance and efficiency and offering high levels of torque while fuel consumption remains low, the whole as more fully appears from the Porsche Cayenne 2013 through 2015 U.S. brochures, communicated herewith, as though recited at length herein, as **Exhibit R-9**, *en liasse*, Petitioner reserving the right to amend and/or add to this Exhibit in order to include additional brochures, specs sheets, marketing materials, etc., issued by Respondents in Canada (which Respondents are being summoned to retain copies of and ultimately produce into the Court record);
16. In addition, Respondents touted the low emission of the vehicles, advertising that the Cayenne Diesel engine will : "help to ensure the reduction of harmful pollutants in the environment", as well as making the Cayenne Diesel compliant with emission standards, the whole as represented by Respondents in the Cayenne Diesel brochures (**Exhibit R-9**);
17. Porsche charged substantial premiums for the Cayenne Diesel vehicles equipped with the Diesel engines, as compared to the other Porsche

Cayenne models (namely approximately \$4,500 with all other options being equal);

18. Even in the eventuality of a recall of the Cayenne Diesel, lessees or purchasers of the Cayenne Diesel have and will continue to suffer significant harm;
19. The only way for Respondents to make the Cayenne Diesel comply with emission standards will be to significantly reduce the vehicles horsepower, torque, and/or fuel efficiency. Thus, if the vehicles are recalled in order to make them compliant with Canadian emission laws and standards, Class Members will suffer harm and damages because their vehicles will no longer perform as advertised and warranted, and this will also cost the Class Members more in gas and/or other expenses;
20. Class Members will also suffer from a significant decrease in the value (and/or resell value) of the Cayenne Diesel by being made compliant with Canadian emission laws and standards, since not only did Class Member overpay for their vehicles initially, but they also will be forced to pay much more to fuel their less fuel-efficient vehicles;
21. The recalled vehicles will be worth less in the used (pre-owned) marketplace because of their decrease in performance and efficiency, which means that Class Members will not be able to recoup the expected value of these vehicles in the future (which includes the overinflated buy-back price set for lease holders in order to purchase their vehicle at the end of their lease);
22. Owners of the Cayenne Diesel equipped with the defeat devices have suffered a monetary loss because of Porsche's unfair, deceptive, and/or fraudulent business practices, and its failures to disclose the true emissions of the vehicles;

23. A similar class action complaint has already been instituted in the United States District Court for the District of New York – Southern District (U.S.A.), as appears from the said New York Class Action Complaint filed on November 3, 2015, communicated herewith, as though recited at length herein, as **Exhibit P-10**. Petitioner reserves his right to amend this motion and this exhibit in order to make reference to additional US proceedings and Petitioner will refer to the US proceedings in order to further demonstrate his “arguable case” burden herein;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

24. Petitioner is a real estate company which is operated and indirectly owned by Mr. F [REDACTED] F [REDACTED];

25. In or about March 2013, Petitioner purchased a new 2013 Porsche Cayenne Diesel (with a 3.0 liter engine) from the Porsche Prestige dealership in Montreal, Quebec, at a total purchase price of \$86,184.00 plus taxes;

26. Petitioner specifically purchased the Cayenne Diesel because of the advertised and represented environment-friendly nature of the vehicle, since Porsche had represented to the public and Petitioner that it was the “cleanest” Cayenne ever, as compared to the regular gas or hybrid models, regarding the levels of emissions released into the environment, and because of the advertised gas millage of said vehicle (i.e. reduced fuel costs);

27. Petitioner trusted and relied upon Porsche’s representations to the effect that the innovative Diesel engine would assist to reduce pollutants in the

environment and would reduce fuel costs. In fact, these claims enticed and convinced the Petitioner to purchase this vehicle over any other comparable vehicles;

28. During the week of November 3, 2015, Petitioner was made aware of the stop-sale order for the Cayenne Diesel models in North-America and the above-mentioned November 2, 2015 EPA Notice of Violation;

29. Had Petitioner known that the defeat device/software was installed in the Cayenne Diesel at the time he agreed to purchase the vehicle, he would not have purchased same and would surely not have agreed to pay the premium for the so-called benefits offered by the diesel models;

30. The value and resell value of Petitioner's Cayenne Diesel has and will be negatively affected by the emissions discoveries mentioned above. If and when the vehicle is recalled and made compliant to emissions laws and standards, the recall itself will cause inconvenience and loss of time for Petitioner and other Class Members, but it will also negatively affect the power, efficiency and fuel costs for the vehicles going forward, representing additional damages for Petitioner and the Class Members, who will no longer have the same vehicle they bargained for when purchasing or leasing it (damages which Petitioner and the Class Members hereby claim from Respondents);

31. Petitioner is clearly concerned and troubled by the discoveries mentioned above, affecting it personally in terms of damages suffered but also affecting the public and environment at large. Petitioner therefore contacted the undersigned attorneys in order to institute the present class actions proceedings on Petitioner's behalf and on behalf of the Class Members;

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

32. Each Class Member has purchased or leased a Porsche Cayenne Diesel, equipped with 3.0 liter engine;
33. Petitioner's and the Class Member's consent when purchasing or leasing the Cayenne Diesel was vitiated as a result of the discovery of the defeat device permitting to cheat emission testing, as described hereinabove;
34. Petitioner and the Class Members would not have purchased or leased the Cayenne Diesel, or would not have paid the inflated price (premium of approximately \$4,500), if it were not for Respondents' misleading representations concerning the Cayenne Diesel's outstanding performance, efficiency, offering high levels of torque with fuel consumption remaining low;
35. Even if the vehicles are recalled in order comply with emissions standards and/or the represented emissions levels, Petitioner and the Class Members will be forced to spend more on fuel and will not receive the advertised performance of their vehicle (aside from loss of time, costs, and/or inconvenience related to the recall itself);
36. Respondents' above-detailed deceitful actions show an intentional, malicious, oppressive and/or high-handed conduct that represents a marked departure from ordinary standards of decency when dealing with customers. In that event, punitive damages should be awarded to Class Members, independently from the compensable damages claimed by Petitioner and the Class Members;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

37. The composition of the Group makes the application of Articles 59 or 67 C.C.P. impractical for the following reasons;
38. Petitioner is unaware of the specific number of persons who purchased the Cayenne Diesel, however it is safe to estimate that it is in the hundreds if not thousands across the country;
39. Class Members are numerous and are scattered across the entire province and country;
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 Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the Court system;
41. Moreover, a multitude of actions instituted risks leading to contradictory judgments on questions of fact and law that are similar or related to all Class Members;
42. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action;
43. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice;

44. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely Respondents' misconduct and false advertising;

45. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:

- a) In manufacturing, marketing, distributing, leasing, and/or selling the Porsche Cayenne Diesel with the hidden defeat device, did the Respondents commit a fault and/or fraud?
- b) Did Respondents make material misrepresentations to the Class Members when selling or leasing the Porsche Cayenne Diesel?
- c) Does this represent unfair, deceptive, and/or fraudulent business practices by the Respondents?
- d) Did the Porsche Cayenne Diesel conform to Canadian emissions standards?
- e) Was the Porsche Cayenne Diesel affected by a latent defect?
- f) Did this fault and/or fraud cause the Class Members' consent in purchasing or leasing the Porsche Cayenne Diesel to be vitiated?
- g) Should the sale or lease contracts signed by the Class Members for the Porsche Cayenne Diesel be annulled or resiliated, and should all amounts paid by the Class Members be reimbursed?
- h) Are Respondents liable to pay damages to the Class Members as a result of this fault, fraud and/or misconduct?

- i) Are Respondents solidarily responsible to pay compensatory damages to the Class Members and if so in what amount?
- j) Are Respondents solidarily responsible to pay exemplary and/or punitive damages to the Class Members and if so in what amount?

46. The majority of the issues to be dealt with are issues common to every Class Member;

47. The interests of justice favor that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

48. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages, product liability, consumer protection, and fraud;

49. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Plaintiff and each of the Class Members;

DECLARE that Defendants have committed a fault, a fraud, an unfair, deceptive, and/or fraudulent business practice, and have made misrepresentations when selling or leasing the Porsche Cayenne Diesel to the Plaintiff and the Class Members;

ANNUL the sale or lease contract signed by Plaintiff and the Class Members for the Porsche Cayenne Diesel;

ORDER AND CONDEMN Defendants solidarily to reimburse the total amounts paid by Plaintiff and the Class Members for their Porsche Cayenne Diesel and **ORDER** Defendants to then retake possession and ownership of the said vehicles, at Defendants' costs;

CONDEMN the Defendants solidarily to pay to Plaintiff and each of the Class Members a sum to be determined in compensatory, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay interest and additional indemnity on the above sums according to the Law from the date of service of the motion to authorize the bringing of the class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest, additional indemnity, and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants solidarily to bear the costs of the present action including experts' fees and all notice fees;

RENDER any other order that this Honorable Court shall determine and that is in the interest of the Class Members;

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

50. Petitioner suggests that this class action be exercised before the Superior Court in the District of Laval for the following reasons:

- a. Many Class Members, including Petitioner, are domiciled in the District of Laval;
- b. Many Class Members purchased or leased the Porsche Cayenne Diesel in the District of Laval (where there is an official Porsche dealership);

51. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Class Members since Petitioner;

- a. is a member of the class who purchased the Porsche Cayenne Diesel;
- b. has and will suffer the damages detailed above, which are caused by Respondents' misconduct and material omissions;
- c. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members;

- d. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class Counsel in this regard;
- e. is ready and available to manage and direct the present action in the interest of the Class Members and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
- f. does not have interests that are antagonistic to those of other Class Members;
- g. has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;
- h. has given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members (Petitioner reserving the right to file into the Court record the communications from Class Members that he or the undersigned attorneys may receive following the institution of these proceedings);
- i. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

52. 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, product liability, consumer protection, and fraud;

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

All residents of Canada (or subsidiarily Quebec), who own or lease a Porsche Cayenne Diesel equipped with a 3.0 liter engine, or any other Group(s) or Sub-Group(s) to be determined by the Court;

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

- a) In manufacturing, marketing, distributing, leasing, and/or selling the Porsche Cayenne Diesel with the hidden defeat device, did the Respondents commit a fault and/or fraud?
- b) Did Respondents make material misrepresentations to the Class Members when selling or leasing the Porsche Cayenne Diesel?
- c) Does this represent unfair, deceptive, and/or fraudulent business practices by the Respondents?
- d) Did the Porsche Cayenne Diesel conform to Canadian emissions standards?

- e) Was the Porsche Cayenne Diesel affected by a latent defect?
- f) Did this fault and/or fraud cause the Class Members' consent in purchasing or leasing the Porsche Cayenne Diesel to be vitiated?
- g) Should the sale or lease contracts signed by the Class Members for the Porsche Cayenne Diesel be annulled or resiliated, and should all amounts paid by the Class Members be reimbursed?
- h) Are Respondents liable to pay damages to the Class Members as a result of this fault, fraud and/or misconduct?
- i) Are Respondents solidarily responsible to pay compensatory damages to the Class Members and if so in what amount?
- j) Are Respondents solidarily responsible to pay exemplary and/or punitive damages to the Class Members and if so in what amount?

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

GRANT the class action of the Plaintiff and each of the Class Members;

DECLARE that Defendants have committed a fault, a fraud, an unfair, deceptive, and/or fraudulent business practice, and have made misrepresentations when selling or leasing the Porsche Cayenne Diesel to the Plaintiff and the Class Members;

ANNUL the sale or lease contract signed by Plaintiff and the Class Members for the Porsche Cayenne Diesel;

ORDER AND CONDEMN Defendants solidarily to reimburse the total amounts paid by Plaintiff and the Class Members for their Porsche Cayenne Diesel and **ORDER** Defendants to then retake possession and ownership of the said vehicles, at Defendants' costs;

CONDEMN the Defendants solidarily to pay to Plaintiff and each of the Class Members a sum to be determined in compensatory, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay interest and additional indemnity on the above sums according to the Law from the date of service of the motion to authorize the bringing of the class action;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest, additional indemnity, and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants solidarily to bear the costs of the present action including experts' fees and all notice fees;

RENDER any other order that this Honorable Court shall determine and that is in the interest of the Class Members;

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

DECLARE that all Class Members who 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 thirty (30) days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with Article 1006 C.C.P., within sixty (60) days from the Judgment to be rendered herein in LA PRESSE, the MONTREAL GAZETTE, and the NATIONAL POST, and **ORDER** Respondents to pay for said publication costs;

ORDER that said notice be available on all of the Respondents' websites, Facebook page(s), and Twitter account(s), with a link stating "Important notice to all past or present purchasers, lessees, or users of a Porsche Cayenne Diesel SUV";

THE WHOLE with costs including all publication costs.

MONTREAL, NOVEMBER 10, 2015
LEX GROUP INC.

(s) Lex Group Inc.

Per: David Assor
Attorneys for Petitioner