

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o : 500-06-001092-200

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SUPERIOR COURT
(Class Action)

LUC BARRÉ,

Applicant

-vs-

VOLKSWAGEN GROUP CANADA INC.

-and-

THE VOLKSWAGEN GROUP OF AMERICA
Inc.

-and-

AUDI CANADA INC.

-and-

AUDI OF AMERICA LLC.

Defendants

VOLKSWAGEN AKTIENGESELLSCHAFT
(VOLKSWAGEN AG)

-and-

AUDI AKTIENGESELLSCHAFT (AUDI AG),

Proposed defendants

APPLICATION FOR LEAVE TO AMEND THE APPLICATION TO AUTHORIZE TO
INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF
(ART. 206 and 585 C.C.P.)

TO THE HONOURABLE MARTIN F. SHEEHAN, JUSTICE OF THE SUPERIOR COURT
OF QUEBEC, THE PROPOSED APPLICANT STATES THE FOLLOWING:

1. On September 3rd, 2020, the Applicant filed his Application for Authorization to Institute a Class Action and to Appoint a Representative Plaintiff ("Application for Authorization") against the Defendants;

2. The Applicants wish to amend the *Application* to Authorize, the whole in accordance with a copy of the “Amended *Application* to Authorize to institute a Class Action and to appoint a *representative plaintiffs*” (the “Amended *Application* to Authorize”) which is being communicated herewith as **Exhibit-1**;
3. On May 25, 2021, the Defendants filed an Application for leave to adduce the following evidence: Affidavit of Andy Noble, Senior Director, Technical Service & Warranty at Volkswagen Group Canada Inc. (Exhibit AN-1);
4. Also on May 25, 2021, the Defendants filed an Application for declinatory exception regarding VW America and Audi America for the reason that the *Application for Authorization* fails to satisfy any of the provisions of Article 3148 C.C.Q as for the American entities of the Defendants. This Application will be presented for adjudication on April 6, 2022;
5. On June 3, 2021, this Court granted the Defendants’ Application for Leave to Adduce Relevant Evidence and allowed the Defendants to file the sworn declaration of Andrew Noble dated May 25, 2021 (Exhibit AN-1);
6. This Court also allowed the Applicant to cross-examine Mr. Andrew Noble out of court on the subject matters raised in his sworn statement, such examination took place on September 2, 2021, as it appears from the transcripts communicated herein as **EXHIBIT-2**;
7. Mr. Noble’s states in his affidavit that Volkswagen Group of America Inc. and Audi of America LLC “*play no role in the research, design, testing, manufacture, importation, distribution, marketing, promotion or sales of Subject Vehicles in Canada. These entities also do not provide any service or maintenance of Subject Vehicles in Canada, and do not play any role in the manufacturers’ warranties applicable to the Subject Vehicles;*”¹ (EXHIBIT AN-1)
8. On cross-examination when asked on the place where the Subject Vehicles sold in Canada were manufactured, Mr. Noble replied that the Volkswagen brand subject vehicles sold in Canada were manufactured in Europe, Mexico and

¹ Mr. Noble struck the word “*ACP*” (AUDI Canada) from paragraph 7 of his affidavit during his examination, as it appears in the transcripts of his examination at page 8, lines 24-25. (EXHIBIT-2)

Chattanooga and for the Audi brand, they were manufactured in Europe and in Mexico;²

9. As is more fully detailed in the Amended *Application* to Authorize (Exhibit-1), the Applicant wishes to amend the *Application* to Authorize in order to:

a) add the Defendants **Volkswagen Aktiengesellschaft (VOLKSWAGEN AG)** and **Audi Aktiengesellschaft (AUDI AG)** as they took part in or coordinated marketing, product development, procurement and/or production of Subject Vehicles sold in Canada. Some Subjects vehicles sold in Canada are being manufactured at plants in Europe which were directed and operated by the German entities of the Defendants, as it appears from **paragraphs 11 to 16** of the *Amended Motion to authorize* (EXHIBIT-1) and to amend **paragraphs 23 and 26** in accordance;

b) add some facts related to the American entities of the Defendants (Volkswagen America, Audi America) as they took part in or coordinated marketing, product development, procurement and/or production of Subject Vehicles sold in Canada. Some of the Subjects vehicles sold in Canada are being manufactured at plants in Chattanooga in the United States and in Mexico which were directed and somehow operated by the American entities of the Defendants, as it appears from the **paragraphs 17-22** of the *Amended Motion to authorize* (EXHIBIT-1) and from extracts of the website of Volkswagen Group of America filed as **EXHIBITS P9 to P13** in support of the *Amended Motion to authorize*;

c) add some facts related to the Canadian entities of the Defendants, Volkswagen Canada and Audi Canada, in **paragraphs 4, 5, 8 and 9**, clarifying their roles;

d) add the **paragraph 101 e)** to the Amended Motion to authorize regarding the damages suffered by the Applicant in Quebec, in accordance with the requirements of 3148 3) CCQ and 575(2) CPC;

e) amend **paragraph 7**, as to add fact regarding Audi Canada as being part of Volkswagen Group of Canada;

² As it appears in the transcripts of his examination at page 54, lines 12-20. (EXHIBIT 2)

f) add some facts regarding the November 1, 2019 National Settlement Agreement on the same latent defects of the timing chain for certain Volkswagen and Audi branded vehicles (model 2008-2014) that was approved by the Superior Courts of Quebec and Ontario and the list of the eligible settled vehicles, as it appears from the **paragraph 3** of the Amended *Application to Authorize* (Exhibit-1), and a copy of the Approval Judgements and the Settlement agreement filed altogether as **EXHIBITS P14**;

10. These new allegations support the Applicant's proposed motion for authorization to commence an action against the Defendants and are necessary to allow a full resolution of this litigation involving the Subject vehicles sold in Canada including Quebec;
11. The Applicant therefore seeks leave to amend the *Application to Authorize* in order to complete the allegations thereof, as is more fully detailed in the "*Amended Application to Authorize*" (EXHIBIT-1);
12. The amendment made does not in any manner change the stated intent of the proceedings, but is necessary and useful to preserve the rights of the Applicant and the Group they represent in Quebec;
13. The amendment is not useless or contrary to the ends of justice, and does not result in an entirely new action;
14. Further, the amendment is necessary for the judicial economy and a full resolution of this litigation, and, in case this Court retain the Defendants' arguments in their Motion for declinatory exception for any lack of jurisdiction of the Quebec Courts on the American entities of the Defendants, and ultimately thus failing to meet the authorization criteria of 575(2) CPC;
15. The Applicant undertakes, upon granting this motion leave to add the Defendants VOLKSWAGEN AG and AUDI AG, to take all the necessary arrangements as to serve these newly added Defendants the *Amended Motion to authorize* pursuant to the requirements of the Civil Code of Procedure regarding the international notification (article 494 CPC), unless otherwise ordered by this Court;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the Applicant's Application for leave to amend their Application to authorize to institute a class action and to appoint a representative plaintiff;

PERMIT Applicants to amend the "Application to authorize as set forth in the *"Amended Application for authorization to institute a class action and to appoint a representative plaintiff"*, attached hereto as **Exhibit-1**;

PERMIT the Applicant to add and file **EXHIBIT P-9 to P-14** in support of their *Amended Application to authorize*.

THE WHOLE without legal costs, except in case of contestation.

MONTREAL, March 23, 2022

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Attorneys for Applicant