

Court file no.: CV-15-22729-CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN

MATTHEW ROBERT QUENNEVILLE and  
MICHAEL JOSEPH PARE

Plaintiffs

and

VOLKSWAGEN GROUP CANADA INC. and  
VOLKSWAGEN AKTIENGESELLSCHAFT

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF ACTION**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

September 22, 2015

Issued  
by: *Clare Law*  
Local Registrar

Address of Court Office:  
245 Windsor Avenue  
Windsor ON N9A 1J2

TO:  
**VOLKSWAGEN GROUP CANADA INC.**  
777 Bayly Street West  
Ajax, ON L1S 7G7

AND TO:  
**VOLKSWAGEN AKIENGESELLSCHAFT**  
Wolfsburg, Lower Saxony, Germany

## CLAIM

### DEFINED TERMS

1. In this notice of action, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**CJA**” means the Ontario *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended;
- (b) “**Class**” or “**Class Members**” means all persons in Canada who, on September 18, 2015, owned one of the **Vehicles**;
- (c) “**Competition Act**” means *Competition Act*, R.S.C. 1985, c. C-34;
- (d) “**Consumer Protection Act**” means *Consumer Protection Act*, S.O. 2002, c. 30;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended;
- (f) “**Excluded Persons**” means **Volkswagen, Volkswagen AG** and their officers, directors and their heirs, successors and assigns;
- (g) “**Pare**” means Michael Joseph Pare;
- (h) “**Plaintiffs**” means **Quenneville** and **Pare**;
- (i) “**Quenneville**” means Matthew Robert Quenneville;
- (j) “**Vehicles**” means the **Vehicles** described in paragraph 3;
- (k) “**Volkswagen**” means Volkswagen Group Canada Inc.; and
- (l) “**Volkswagen AG**” means diesel Volkswagen Aktiengesellschaft.

2. The Plaintiffs, on their own behalf and on behalf of all Class Members, claim:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs;
- (b) statutory damages pursuant to the Competition Act and the Consumer Protection Act (and equivalent statutes in every Canadian Province) in an amount to be determined by this Honourable Court;

- (c) general damages and special damages in the amount of \$1,000,000,000;
- (d) punitive damages and/or aggregated damages in the amount of \$100,000,000;
- (e) a reference to decide any issues not decided at the trial of the common issues;
- (f) prejudgment interest compounded and post-judgment interest pursuant to the *CJA*;
- (g) costs of this action pursuant to the *CPA*, alternatively, on a substantial indemnity basis plus the cost of administration and notice pursuant to s. 26(9) of the *CPA* plus applicable taxes; and,
- (h) such further and other relief as to this Honourable Court seems just.

### THE NATURE OF THE ACTION

3. This class action concerns the intentional or negligent and dangerous design, manufacture and installation of software in the Vehicles which suppressed the true measure of emissions or pollutant levels, including nitrogen oxide, in the Vehicles manufactured and/or distributed by Volkswagen named in the following chart:

<b>MODEL</b>	<b>MODEL YEARS: INCLUSIVE</b>
Jetta	2009 to 2015
Beetle	2013 to 2015
Golf	2009 to 2015
Golf Wagon/Sportswagon	2009 to 2015
Passat	2012 to 2015
Audi A3	2009 to 2015

## **THE PLAINTIFFS**

4. Quenneville resides in the City of Windsor. As of September 18, 2015, he owned one of the Vehicles, namely, a Turbo Diesel Golf Station Wagon, VIN number 3VWKL7AJ8AWG85540.

5. Pare resides in Mount Brydges, Ontario. As of September 18, 2015, he owned one of the Vehicles, namely, a Diesel Passat VIN number 1VWCN7A36CC102306.

## **PARTICULARS OF THE CLASS**

6. The Class is comprised of all persons in Canada who, on September 18, 2015, owned one of the Vehicles.

## **THE DEFENDANTS**

7. Volkswagen AG is a German car manufacturer headquartered in Wolfsburg, Lower Saxony, Germany. It is the second largest automaker in the world. Volkswagen AG and its wholly owned subsidiaries are responsible for the engineering, design, development, research and manufacture of the Vehicles.

8. Volkswagen is a Canadian federally incorporated company with its head office in Ajax, Ontario. It does not manufacture any automobiles in Canada but it is involved with the

engineering, design, development, research, manufacture and distribution of the Vehicles.

Volkswagen is a wholly-owned subsidiary of Volkswagen AG.

9. At all material times, Volkswagen was the sole distributor of the Vehicles in Canada. It sold the Vehicles through its dealer and retailer network.

### **THE DANGEROUS AND INTENTIONAL DEFECTS IN THE VEHICLES**

10. The emissions and pollutants, including nitrogen oxide, from the diesel engines in the Vehicles are measurable.

11. On September 18, 2015, Volkswagen AG admitted when the Vehicles were tested by the E.P.A. in the United States, by Environment Canada or others, the manipulative software defeated or suppressed the true measure of emissions and pollutants, including nitrogen oxide, from the diesel engines in the Vehicles. Volkswagen AG said: “a noticeable deviation between bench-test results and actual road use was established.”

12. Volkswagen AG also admitted that during normal driving, the Vehicles would emit pollutants, including nitrogen oxide, from 10 to 40 times the legal limits.

13. On September 21, 2015, Volkswagen adopted the message pleaded in paragraphs 11 and 12.

## **NEGLIGENCE**

14. Volkswagen and Volkswagen AG, through their employees, officers, directors and agents, failed to meet the reasonable standard of conduct (care) expected in the circumstances when manufacturing and/or distributing the Vehicles and the diesel engines in the Vehicles.

## **CONSPIRACY**

15. Volkswagen, Volkswagen AG and others, including its officers, directors and agents, conspired to intentionally created a manipulative software to defeat or suppress the true nature of dangerous emissions and pollutants, including nitrogen oxide, for diesel engines in the Vehicles when being examined for emission standards and denied to the E.P.A. when it was specifically asked about the emissions in the Vehicles. The diesel engines in the Vehicles were programmed to sense when emissions were being tested and to turn on the equipment that reduced the readings of the emissions.

## **STATUTORY REMEDIES**

16. As used below, the term "Representation" means the defendants' failure to state any or all of the following facts:

- (a) the Vehicles were not free from defects;

- (b) the emissions software in the Vehicles created inaccurate emissions testing results;
- (c) the emissions software in the Vehicles was designed to create false emissions testing results;
- (d) the emissions software in the Vehicles did mislead those persons who tested emissions in the Vehicles;
- (e) the Vehicles emitted more pollutants than the testing of the Vehicles indicated;
- (f) the Vehicles emitted more pollutants than the defendants had publicly stated; and,
- (g) the Vehicles would live up to high performance standards and specifications while emitting a low level of pollutants and emissions.

17. The Plaintiffs state that the Representation deceived the Class and that the Representation constituted an unfair practice which induced the Class to purchase the Vehicles. As a result, the Class is entitled to damages under the Ontario *Consumer Protection Act* (and its equivalent acts in all other Canadian Provinces).

18. The defendants made the Representation to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

- (a) was made for the purpose of promoting the business interests of the defendants;
- (b) was made to the public;
- (c) was false and misleading in a material respect; and
- (d) stated that the Vehicles emitted significantly less pollutants than they in fact did.



19. The Class relied on the Representation.

20. The Class's reliance on the Representation is established by their purchase of the Vehicles. Had the Class known that the Representation was false and misleading, they would not have purchased the Vehicles.

21. Pursuant to s. 36 of the *Competition Act* the defendants are liable to pay the damages which are payable as a result of the breach of s. 52.

#### **GENERAL AND SPECIAL DAMAGES**

22. As a result of the dangerous and harmful defects in the Vehicles, and the failure by Volkswagen and Volkswagen AG to disclose the extent of the Vehicles' emissions and pollutants, including nitrogen oxide, until September 18, 2015, the Class has suffered damages. Volkswagen and Volkswagen AG decided to withdraw the Vehicles from the marketplace in Canada and the United States. The value of each of the Vehicles is reduced. Each Class Member must expend the time to have his/her Vehicle repaired and be without their Vehicles. Volkswagen and Volkswagen AG should compensate each Class Member for their losses and inconvenience.

23. The Class Members cannot get their Vehicle repaired immediately. In due course, the Class Members cannot get a renewal of their licence plate for each of the Vehicles and must have their engine replaced.

24. In order for the Vehicles to be brought in line with Provincial and Federal emissions rules, regulations and laws, the Vehicles' performance standards will have to be lowered and reduced. As a result, the value of each of the Vehicles will be irreparably diminished.

25. The Plaintiffs plead that the Class Members' damages were sustained in Ontario and in the rest of Canada.

#### **PLACE OF TRIAL**

26. The Plaintiffs propose that this action be tried in the City of Windsor.

#### **SERVICE**

27. This originating process may be served without court order outside Ontario in that the claim is:

- (a) in respect of a tort committed in Ontario (rule 17.02(g));
- (b) in respect of damages sustained in Ontario arising from a tort wherever committed (rule 17.02(g));
- (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
- (d) against a person carrying on business in Ontario (rule 17.02(p)).

September 22, 2015

**SUTTS, STROSBURG LLP**

Lawyers  
600 - 251 Goyeau Street  
Windsor ON N9A 6V4

HARVEY T. STROSBURG, Q.C.  
LSUC#: 12640O; Tel: 519.561.6228

WILLIAM V. SASSO  
LSUC#: 12134I; Tel: 519-561-6222

MYRON W. SHULGAN  
LSUC#: 13823F; Tel: 519-561-6233

S. ALEX CONSTANTIN  
LSUC#: 60397W; Tel: 519.561.6231

Fax: 519.561.6203

**KOSKIE MINSKY LLP**

Lawyers  
900 - 20 Queen Street West  
Toronto, ON M5H 3R3

KIRK M. BAERT  
LSUC#: 30942O; Tel: 416-595-2117

JAMES SAYCE  
LSUC#: 58730M; Tel: 416-542-6298

Fax: 416-204-2809

Lawyers for the plaintiffs

**MCKENZIE LAKE**

Lawyers  
140 Fullarton Street, Suite 1800  
London ON N6A 5P2

MICHAEL PEERLESS  
LSUC #: 34127P; Tel: 519.667.2644

SABRINA LOMBARDI  
LSUC#: 52116R; Tel: 519.667.2645

Fax: 519.672.2674

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-and-

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Defendants

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**PROCEEDING COMMENCED AT**  
**WINDSOR**

**NOTICE OF ACTION**

**SUTTS, STROSBURG LLP**  
Lawyers  
600 - 251 Goyeau Street  
Windsor, ON N9A 6V4

HARVEY T. STROSBURG, Q.C.  
LSUC# 126400  
WILLIAM V. SASSO  
LSUC# 121341  
MYRON W. SHULGAN  
LSUC# 13823F  
S. ALEX CONSTANTIN  
LSUC# 60397W

Tel: 519.561.6228  
Fax: 519.561.6203

**McKENZIE LAKE LAWYERS**  
**LLP**

Lawyers  
140 Fullarton Street, Suite 1800  
London, ON N6A 5P2

MICHAEL PEERLESS  
LSUC# 34127P  
SABRINA LOMBARDI  
LSUC# 52116R

Tel: 519.667.2645  
Fax: 519.672.2674

**KOSKIE MINSKY LLP**  
Lawyers  
900 - 20 Queen Street West  
Toronto, ON M5H 3R3

KIRK M. BAERT  
LSUC#: 309420;

JAMES SAYCE  
LSUC#: 58730M

Tel: 416-595-2117  
Fax: 416-204-2809

Lawyers for the Plaintiffs

File No. 94.800.000  
#1337857