

CV-16-549639-00CP

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

MATTHEW ROBERT QUENNEVILLE, LUCIANO TAURO,
MICHAEL JOSEPH PARE, THERESE H. GADOURY,
AMY FITZGERALD, RENEE JAMES, AL-NOOR WISSANJI,
JACK MASTROMATTEI, JAY MACDONALD and JUDITH ANNE BECKETT

Plaintiffs

and

ROBERT BOSCH GMBH

Defendant



Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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.

Date March 29, 2016 Issued by T. Augusto
Local Registrar

Address of court office: 393 University Avenue 10th Floor
Toronto, Ontario M5G 1E6

TO: ROBERT BOSCH GMBH
Postfach 30 02 20
Stuttgart, 70442
Germany

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DEFINED TERMS

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

- a) “**Audi AG**” means Audi Aktiengesellschaft;
- b) “**Audi Canada**” means Audi Canada, Inc.;
- c) “**Audi of America**” means Audi of America, Inc.;
- d) “**Auxiliary Emissions Control Device**” or “**AECD**” means any element of design in a vehicle that senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of an emissions control system;
- e) “**Beckett**” means Judith Anne Beckett;
- f) “**CEPA**” means the Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33, as amended;
- g) “**CFR**” means the Code of Federal Regulations of the United States, as amended;
- h) “**CJA**” means the Courts of Justice Act, R.S.O. 1990, c. C-43, as amended;
- i) “**Class**” or “**Class Members**” means all persons in Canada, except for **Excluded Persons** who own, owned, lease or leased one of the **Vehicles**;
- j) “**Competition Act**” means the *Competition Act*, R.S.C. 1985, c. C-34;
- k) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended;
- l) “**Defeat Device**” means an **AECD** that reduces the effectiveness of the emissions control system under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, unless:
 - (i) those conditions are substantially included in the emissions test procedures of the United States or Canadian governments;
 - (ii) it is needed to protect the vehicle against damage or accident; and
 - (iii) its use does not go beyond the requirements of engine starting;
- m) “**Defendant**” means **Robert Bosch GmbH**;

- n) “**Emissions Standards**” means the regulations on vehicle and engine emissions set out in Title 40, chapter I, subchapter C, part 86, of the **CFR** and made under **CEPA** in the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2, as amended;
- o) “**EPA**” means the United States Environmental Protection Agency;
- p) “**E.P. Act**” means the *Environmental Protection Act*, R.S.O. 1990, c. E.19 as amended including ON Reg 361/98;
- q) “**EPA Certificate**” means a certificate of conformity to U.S. federal standards issued by the **EPA** under Title 40, chapter I, subchapter C, part 86, of the **CFR**;
- r) “**Excluded Persons**” means:
 - (i) the **Defendant** and its officers and directors;
 - (ii) the authorized motor vehicle dealers of the **Defendant** and the officers and directors of those dealers; and,
 - (iii) the heirs, successors and assigns of the persons described in subparagraphs (i) and (ii);
- s) “**Fitzgerald**” means Amy Fitzgerald;
- t) “**Gadoury**” means Therese H. Gadoury;
- u) “**James**” means Renee James;
- v) “**MacDonald**” means Jay MacDonald;
- w) “**Mastromattei**” means Jack Mastromattei;
- x) “**NOV**” means a Notice of Violation of the United States Clean Air Act, 42 U.S.C. s. 7401 et seq. (1970);
- y) “**NOx**” means nitrogen oxides;
- z) “**Pare**” means Michael Joseph Pare;
- aa) “**Plaintiffs**” means **Quenneville, Pare, Tauro, Gadoury, Fitzgerald, James, Wissanji, Mastromattei, Macdonald and Beckett**;
- bb) “**Porsche**” means Porsche Cars Canada Ltd., Porsche Cars North America, Inc. and Dr. Ing. H.C. F. Porsche Aktiengesellschaft;
- cc) “**Quenneville**” means Matthew Robert Quenneville;
- dd) “**SCR**” means selective catalytic reduction;

- ee) “**Software**” means the entire system in the Vehicles that was designed, manufactured and installed to detect when the Vehicles were undergoing emissions testing and, at all other times, reduced the effectiveness of the emissions control system;
- ff) “**TDI**” means Turbocharged Direct Injection;
- gg) “**Vehicles**” means the following diesel-powered vehicles:

(a) on September 18, 2015:

MODEL	MODEL YEARS: INCLUSIVE
Volkswagen Jetta	2009 - 2015
Volkswagen Jetta Wagon	2009
Volkswagen Golf	2010 – 2013, 2015
Volkswagen Passat	2012 - 2015
Volkswagen Beetle	2013 - 2015
Volkswagen Golf Wagon	2010 - 2014
Volkswagen Golf Sportswagon	2015
Audi A3	2010 – 2013, 2015

and,

(b) on November 2, 2015;

MODEL	MODEL YEARS: INCLUSIVE
Audi A6,, A7, A8, A8L and Q5	2016
Porsche Cayenne	2015
Volkswagen Touareg	2014

and

(c) on November 19, 2015:

MODEL	MODEL YEARS: INCLUSIVE
Audi A6, A7, A8, A8L, Q5, Q7	2009-2015
Porsche Cayenne	2013-2014, 2016
VW Touareg	2009-2013, 2015-2016

- hh) “**Volkswagen AG**” means Volkswagen Aktiengesellschaft;
- ii) “**Volkswagen Canada**” means Volkswagen Group Canada, Inc.; and

jj) “Volkswagen USA” means Volkswagen Group of America, Inc.

RELIEF SOUGHT

2. The Plaintiffs, on their own behalf and on behalf of all Class Members, seek:
 - a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs;
 - b) a declaration that the Defendant engaged in a conspiracy to install the Software, to violate the Emissions Standards, to import the Vehicles into Canada and to sell them unlawfully in Canada;
 - c) statutory damages pursuant to CEPA in an amount to be determined by this Honourable Court;
 - d) a declaration that the Defendant was negligent in the engineering, design, development, research, manufacture, and regulatory compliance of the Software installed in the Vehicles;
 - e) general damages and special damages in the amount of \$4,000,000,000;
 - f) punitive damages and/or aggregated damages in the amount of \$100,000,000;
 - g) a reference to decide any issues not decided at the trial of the common issues;
 - h) prejudgment interest compounded and postjudgment interest pursuant to the CJA;
 - i) costs of the prosecution of this proceeding pursuant to s. 40 of CEPA; and
 - j) such further and other relief as to this Honourable Court seems just.

OVERVIEW

3. As a result of the admissions by Volkswagen AG and Volkswagen USA, that they had manufactured and installed Defeat Devices in certain diesel vehicles to render inoperative elements of their emissions control system, on or about September 18, 2015, the EPA announced that it was issuing a Notice of Violation of the Clean Air Act (“NOV”) for various diesel vehicles, including the following diesel Vehicles sold in Canada:

MODEL	MODEL YEARS: INCLUSIVE
Volkswagen Jetta	2009 - 2015
Volkswagen Jetta Wagon	2009
Volkswagen Golf	2010 – 2013, 2015
Volkswagen Passat	2012 - 2015
Volkswagen Beetle	2013 - 2015
Volkswagen Golf Wagon	2010 - 2014
Volkswagen Golf Sportswagon	2015
Audi A3	2010 – 2013, 2015

4. On November 2, 2015, the EPA issued a second NOV for the following Vehicles sold in Canada:

MODEL	MODEL YEARS: INCLUSIVE
Audi A6,, A7, A8, A8L and Q5	2016
Porsche Cayenne	2015
Volkswagen Touareg	2014

5. On November 19, 2015, Volkswagen informed the EPA that the Defeat Device is present in all of its U.S. 3.0 liter diesel Vehicles, model year 2009 to the present. Volkswagen Canada has advised that the following Vehicles in Canada are affected:

MODEL	MODEL YEARS: INCLUSIVE
Audi A6, A7, A8, Q5, Q7	2009-2016
Porsche Cayenne	2013-2016

MODEL	MODEL YEARS: INCLUSIVE
VW Touareg	2009-2016

6. The Software detected when the Vehicles underwent emissions testing and activated the Defeat Device, which produced compliant emission results. When not undergoing emissions testing, the Software reduced the effectiveness of the Vehicles' emissions control systems, thereby increasing emissions, including NOx, which causes asthma, emphysema, bronchitis and other respiratory diseases.

7. The Defeat Device made the Vehicles unlawful to import into Canada under CEPA.

8. The Defendant designed, supplied and sold the Software containing the Defeat Device to Volkswagen, Audi, Porsche and to others unknown (the "Purchasers"). The Purchasers then installed the Software in the Vehicles and marketed the Vehicles as having superior performance, fuel efficiency and as being better for the environment than gasoline-powered vehicles.

9. The Defendant knew or ought to have known that the Purchasers would use the Software to engage in the misconduct set out herein, but nevertheless continued to sell the Software to the Purchasers.

THE PLAINTIFFS

10. Quenneville resides in Windsor, Ontario. As of September 18, 2015, he owned one of the Vehicles, namely, a TDI Golf Sportwagen model year 2010.

11. Pare resides in Mount Brydges, Ontario. As of September 18, 2015, he owned one of the Vehicles, namely, a Diesel Passat model year 2012.

12. Tauro resides in Schomberg, Ontario. As of September 18, 2015, he owned four of the Vehicles, namely, two Diesel Jettas model years 2012, and two Diesel Golfs model years 2015.

13. Gadoury resides in Windsor, Ontario. As of September 18, 2015, she owned one of the Vehicles, namely, a Diesel Audi A3 model year 2010.

14. Fitzgerald resides in Windsor, Ontario. As of September 18, 2015, she owned one of the Vehicles, namely, a Diesel Beetle model year 2013.

15. James resides in Oakville, Ontario. As of September 18, 2015, she owned one of the Vehicles, namely, a Diesel Beetle model year 2013. James financed the Vehicle through VW Credit Canada.

16. Wissanji resides in Toronto, Ontario. As of September 18, 2015, he leased one of the Vehicles through VW Credit Canada Inc., namely, a Diesel Jetta TDI model year 2014.

17. Mastromattei resides in Halton Hills, Ontario. As of September 18, 2015, he leased one of the Vehicles through VW Credit Canada Inc., namely, a Diesel Jetta model year 2013.

18. MacDonald resides in LaSalle, Ontario. As of September 18, 2015, he owned one of the Vehicles, namely, a Diesel Golf Wagon model year 2011.

19. Beckett resides in London, Ontario. As of November 2, 2015, she owned one of the Vehicles, namely, a Diesel Porsche Cayenne model year 2014.

20. Each of the Plaintiffs and the Class Members paid a premium of several thousand dollars for their diesel-powered Vehicles over similarly equipped gasoline-powered models. The Plaintiffs and Class Members also suffered the damages particularized below.

THE DEFENDANT

21. The Defendant, Robert Bosch GmbH (“Bosch”), is a German multinational engineering and electronics company, headquartered in Gerlingen, Germany. Bosch designed, supplied and sold the Software to the Purchasers.

THE CLASS

22. The Class is comprised of all persons in Canada, except for Excluded Persons, who own, owned, lease or leased one of the Vehicles, or such other definition that the court finds favourable.

THE DEMAND FOR “CLEAN” DIESEL

23. Over the past decade, consumer tastes and tightening regulations have created a strong demand in the consumer automotive market for cars that offer superior performance, fuel-efficiency and are better for the environment.

24. Many automakers responded to these trends by producing vehicles that run partially or entirely on electric motors. Other automakers, including Volkswagen, Audi, Porsche, and others unknown, took a different approach. They responded, in part, by producing cars with purportedly fuel-efficient or “clean” diesel engines.

25. While the use of diesel in passenger cars was not uncommon in Europe, the trend had previously never caught on in North America, where diesel engines were mostly limited to trucks and other heavy-duty vehicles. In large part, this was due to the different emissions standards applicable in the European Union and in the North American markets.

26. The Vehicles use internal combustion engines that produce power by burning diesel fuel.¹

27. The Vehicles produce diesel exhaust. Diesel exhaust is materially different from the exhaust produced by gasoline engines. Among other things, the lean-burning nature of diesel engines and the high temperatures and pressures of the combustion process result in vastly increased levels of NOx and other pollutants in diesel exhaust as compared to gasoline engine exhaust. NOx emissions are dangerous air pollutants that are harmful to humans and the environment. The release of NOx emissions contributes to, among other things, the formation of acid rain and ground level ozone. Exposure to NOx causes or contributes to, among other health issues, serious forms of respiratory illness and poses a particular threat to the elderly, children, and people with asthma.

28. Diesel vehicle manufacturers are required to comply with the government Emissions Standards as further set out herein. In order to comply with these Emissions Standards, diesel vehicle manufacturers employ a number of systems (including engine control software and emissions hardware systems) to reduce NOx emissions.

29. Many diesel vehicle manufacturers will install a urea injection system into vehicles to trap NOx particles before they are released into the atmosphere. However, installing a urea injection system will generally increase the cost of a vehicle. The Software designed and sold by the Defendant allowed the Purchasers to avoid this extra cost—instead of installing urea injection systems in the Vehicles, the Purchasers could simply install the Defendant's Software, which would allow them to circumvent the Emissions Standards while increasing their profits.

¹ Diesel-powered engines differ from gasoline-powered engines in that they use highly compressed hot air to ignite the fuel instead of a spark plug.

CANADIAN EMISSION LAWS, REGULATIONS & POLICIES

30. The Vehicles and their engines are required to meet the Emissions Standards in order to be sold, used or licensed in Canada. Canadian Emissions Standards are closely aligned with U.S. Emissions Standards, to ensure that common, safe environmental outcomes are achieved.

31. Vehicles and/or engines that have been issued an EPA Certificate certifying that they meet U.S. Emissions Standards are eligible for sale and use in Canada as set out in the regulations under CEPA.

32. Canadian and U.S. Emissions Standards prohibit equipping a vehicle or engine with a Defeat Device subject to limited exceptions that are not applicable to this proceeding (e.g. in relation to emergency response vehicles).

33. Pursuant to the Emissions Standards, the following terms mean:

- a) “**defeat device**” means an auxiliary emission control device that reduces the effectiveness of the emission control systems under conditions that may reasonably be expected to be encountered in normal vehicle operation and use.
- b) “**auxiliary emission control device**” means any element of design that senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of an emission control system.
- c) “**element of design**” means, in respect of a vehicle or engine,
 - i. any control system, including computer software, electronic control systems and computer logic;
 - ii. any control system calibrations;
 - iii. the results of systems interaction; or
 - iv. any hardware items.
- d) “**emission control system**” means a unique group of emission control devices, auxiliary emission control devices, engine modifications and strategies, and other elements of design used to control exhaust emissions from a vehicle.

34. All persons, including the Defendant, are prohibited from assembling, manufacturing, importing and/or selling into Canada vehicles, engines or equipment that do not meet the Emissions Standards.

35. At all material times, the Defendant knew or should have known that the Vehicles were required to comply with Canadian law, regulations and policy in respect of Emissions Standards, including those imposed pursuant to CEPA and the regulations thereto, and to Provincial and Territorial emissions legislation and regulations.

36. The Defendant knowingly, intentionally or negligently designed and sold to the Purchasers Software that contained an Auxiliary Emissions Control Device that was, or amounted to, a Defeat Device. The purpose of the Defeat Device was to evade Emissions Standards and other U.S., Canadian Federal, Provincial and Territorial laws, regulations and policies about emissions standards and to mislead regulators and consumers about the performance of the Vehicles.

37. As described above, the Software allows the Vehicles to meet the Emissions Standards during emissions tests, but permits far higher emissions during the normal operation of the Vehicles. The Defeat Device in the Vehicles works (through the use of the Software) by switching on the full emissions control systems only when the engines of the Vehicles are undergoing emissions testing. These emissions control systems are not used or applied under normal vehicle driving operation. As a result, the Vehicles produce far greater levels of emissions and pollutants during actual road operation (up to 40 times above Emissions Standards-compliant levels).

38. As early as 2007, the Defendant warned Volkswagen that using its Software as a Defeat Device in vehicles that were driven on the road would constitute an offense. Nevertheless, the Defendant proceeded to sell the Software to Volkswagen, Audi, Porsche, and other Purchasers knowing that it would be used in production vehicles as a Defeat Device. Instead of refusing to provide Purchasers with the Software that would enable them to engage in fraud, Bosch decided instead to profit by selling the Software.

39. As a result of the acts of the Defendant, in concert with Volkswagen, Audi, Porsche, and others unknown, each owner or lessor of a Vehicle is or may be in violation of Federal, Provincial and Territorial environmental laws, regulations and policies, including the E.P. Act and its regulations.

40. The fact that the Vehicles do not satisfy the Emissions Standards subjects the Class Members to potential penalties, sanctions and denial of their rights to use the Vehicles.

41. Among other things, the Defendant failed to warn Class Members or the Canadian regulators of the foregoing notwithstanding that the Defendant knew or ought to have known that the Vehicles contained its Software and that its Software did not comply with the Emissions Standards.

CONTINUED CONCEALMENT OF DEFEAT DEVICE

42. In or around May 2014, researchers from West Virginia University, working for a public interest group in the U.S., tested the emissions produced by a number of vehicles and found that they exceeded U.S. NOx emissions standards by between 5 to 35 times. In response to those findings, air quality regulators in California and the EPA opened an investigation into Volkswagen AG and its subsidiary, Volkswagen USA.

43. Volkswagen AG and Volkswagen USA initially denied any wrongdoing and concealed the use of the Defeat Device from the U.S. regulators and the public. Discussions between Volkswagen AG, Volkswagen USA and the U.S. regulators went on for several months. As part of those discussions Volkswagen AG and Volkswagen USA attempted to replicate the West Virginia University researchers' results.

44. Volkswagen AG and Volkswagen USA subsequently advised the U.S. regulators that they had identified the reasons for the higher emissions and proposed to remedy any deficiencies with a software patch. Nearly 500,000 vehicles in the U.S. were recalled in December 2014 for implementation of the software patch.

45. Tests conducted by the U.S. regulators confirmed that the December 2014 recall failed to reduce the vehicles' NOx emissions to acceptable or lawful levels or at all.

46. In or around the same time, the U.S. regulators were considering whether they would certify Volkswagen AG and Volkswagen USA's 2016 models for sale. The U.S. regulators advised that they would not approve Volkswagen's 2016 models for sale unless questions about the discrepancies between laboratory and real-world emissions testing were resolved.

47. Faced with the threat of being unable to sell any of their vehicles in the U.S., on or about September 3, 2015, Volkswagen AG and Volkswagen USA admitted that they had installed the Software, as a Defeat Device, in certain of their vehicles.

48. On September 18, 2015, the EPA announced that it was issuing a NOV. The NOV alleged that four-cylinder Volkswagen and Audi diesel Vehicles from model years 2009-2015 included Software that circumvented EPA emissions standards for certain air pollutants.

49. On or about September 21, 2015, Volkswagen AG issued a stop sale order, suspending the sale of its Vehicles in Canada.

50. Volkswagen and Audi have admitted use of the Defendant's Software in a number of public statements including, but not limited to:

- a) A Volkswagen AG media release dated September 19, 2015 that stated, in part, that Volkswagen AG would do everything necessary in order to reverse the damage it had caused;
- b) A Volkswagen AG media release dated September 22, 2015 that recognized the irregularities concerning the Software, that referred to a noticeable deviation between bench test results and actual road use for its vehicles, and that otherwise stated, in part, that:
 - (i) Volkswagen AG had set aside a provision of some 6.5 billion EUR to address the issue; and,
 - (ii) it was the top priority of the Board of Management of Volkswagen AG to win back lost trust;
- c) A statement by the CEO of Volkswagen AG, Prof. Dr. Martin Winterkorn, dated September 23, 2015 announcing his resignation and stating, among other things, that he was "stunned that misconduct on such a scale was possible in the Volkswagen Group";
- d) A media release by the Executive Committee of Volkswagen AG's Supervisory Board dated September 23, 2015, specifically referring to the manipulation of emissions data of Volkswagen Group diesel engines and stating, in part, that the Executive Committee:
 - i. recognized the economic damage caused and the loss of trust among its customers worldwide;
 - ii. agreed that the mistakes needed to be corrected; and
 - iii. considered that criminal proceedings may be relevant due to the irregularities;
- e) A statement at a public event for the launch of the 2016 Volkswagen Passat on September 21, 2015, in which Michael Horn, Volkswagen USA's CEO, stated that Volkswagen had "totally screwed up" and that "our company was dishonest with the EPA, and the California Air Resources Board and with all of you";

- f) A media release by the Supervisory Board of Volkswagen AG dated September 25, 2015, specifically referring to the manipulations that deeply shocked Volkswagen, the disaster of the test manipulations, and the unlawful behaviour of engineers and technicians involved in engine development; and
- g) An undated open letter from Maria Stenström, President and CEO of Volkswagen Canada, apologizing for the emissions compliance issues “on behalf of the Volkswagen corporation”.

51. In addition to the above-listed statements, in or around September, 2015, Volkswagen USA created the website vwdieselinfo.com, which includes, among other things, answers to frequently asked questions about its vehicles and the Defeat Devices. The following answer is in response to the question, “Are the news reports of this “defeat device” true?”:

“Government regulations limit the use of engine software that reduces the effectiveness of a vehicle’s emissions control systems. Those are the “defeat device” regulations, and regrettably, VW violated those regulations. We take full responsibility – and deeply regret that this happened.”

52. In addition to the above-listed statements, again in or around September, 2015, Volkswagen Canada created the website vwemissionsinfo.ca which includes, among other things, the following questions and answers under the heading “Emissions: Your Questions”:

- a) In response to the question, “Are there no processes in place to prevent something like this happening?”, is the following answer:

“The discrepancies resulted from software installed at the time of manufacture...Volkswagen has commissioned an external investigation to determine how these discrepancies occurred and will take action based on the findings to ensure they do not occur again.”
- b) In response to the question, “What are the precise causes of the deviations?”, is the following answer:

“Software installed at the time permitted deviations in emissions performance depending on whether the vehicle was running during a regulatory compliance-related test cycle or running outside the test cycle during normal road use. We will have to await the outcome of the ongoing investigations before we can provide further information on this.”
- c) In response to the question, “Was there deliberate cheating to obtain approval?”, is the following answer:

“Volkswagen has admitted the existence of the test recognition software to the US EPA. This issue is the subject of the ongoing regulatory investigations in the United States and elsewhere. Volkswagen is also conducting its own internal and external investigations to determine how and why this occurred. Volkswagen will continue to co-operate fully with regulators and, in the meantime, is working at full speed to develop and implement the technical remedy that will rectify these discrepancies.”

53. In addition, Volkswagen Canada posted to its website (vwemissionsinfo.ca) the transcript of the testimony of Michael Horn, President and CEO of Volkswagen USA, to the United States’ House of Representatives Committee on Energy and Commerce on October 8, 2015. Mr. Horn testified among other things, that:

“On behalf of our company, and my colleagues in Germany, I would like to offer a sincere apology for Volkswagen’s use of a software program that served to defeat the regular emissions testing regime.

[...]

On September 3, 2015, Volkswagen AG disclosed at a meeting with the California Air Resources Board (“CARB”) and the U.S. Environmental Protection Agency (“EPA”) that emissions software in four cylinder diesel vehicles from model years 2009-2015 contained a “defeat device” in the form of hidden software that could recognize whether a vehicle was being operated in a test laboratory or on the road. The software made those emit higher levels of nitrogen oxides when the vehicles were driven in actual road use than during laboratory testing.

[...]

These events are deeply troubling. I did not think that something like this was possible at the Volkswagen Group. We have broken the trust of our customers, dealerships, and employees, as well as the public and regulators. Let me be clear, we at Volkswagen take full responsibility for our actions and we are working with all relevant authorities in a cooperative way.

[...]

We are determined to make things right. This includes accepting the consequences of our acts, providing a remedy, and beginning to restore the trust of our customers, dealerships, employees, the regulators, and the American public.

[...]

In closing, I again apologize on behalf of everyone at Volkswagen. We will fully cooperate with all responsible authorities. We will find remedies for our customers, and we will work to ensure that this will never happen again.”

54. On or about October 12, 2015, Class Members who then owned or leased Audi vehicles received a letter from Audi Canada’s President and CEO admitting that Audi Canada’s vehicles “contained software aimed at producing better emissions results in testing, and that these vehicles do not comply with emissions standards.”

55. On or about October 15, 2015, Class Members who then owned or leased the affected Volkswagen vehicles received a letter from Volkswagen Canada’s President and CEO admitting that Volkswagen Canada had “violated your trust” and that the vehicles “may not comply with government emissions standards.”

56. On November 2, 2015, the EPA announced that it was issuing the November 2, 2015 NOV. This NOV alleged that six-cylinder Volkswagen, Audi and Porsche diesel Vehicles from model years 2014-2016 also included Software that circumvented EPA emissions standards for certain air pollutants.

57. Volkswagen Canada (which is also a wholly owned indirect subsidiary of Volkswagen AG) subsequently advised or confirmed that the Porsche Cayenne 3.0 litre diesel models in Canada for the years 2013-2016 contained the Software.

58. On or about November 6, 2015, Class Members who then owned or leased the affected Porsche Vehicles received a letter from Porsche Canada’s President and CEO where he “apologize[d]” on behalf of Porsche Canada with respect to the November 2, 2015 NOV.

59. On or about December 21, 2015, Class Members who then owned or leased the affected Porsche Vehicles received a second letter from Porsche Canada’s President and CEO where he

advised that Class Members' warranty would be extended by a 2-year limited warranty and asking the Class Members to "allow us the necessary time to ensure we make this right for you."

CONSPIRACY

60. The Defendant and others, including its officers, directors and agents and co-conspirators that are known to the Defendant but unknown to the Plaintiffs, conspired with Volkswagen, Audi, Porsche and others unknown, from 2009 or earlier to 2015 in Germany, the US, and Canada, to intentionally create or make use of the Software to defeat or suppress the true nature of dangerous emissions and pollutants for diesel engines in the Vehicles when being examined for Emissions Standards. It concealed from the EPA, Canadian authorities and others the existence of the Defeat Device and any other AECD.

61. The Defendant had as its preponderant motivation and purpose a desire to increase its profits by designing, engineering, supplying and selling the Software, which was installed in the Vehicles, unlawfully imported, unfit for use and harmful to the environment and human health and safety. The Defendant intended to cause harm to the Plaintiffs and the Class Members and to thereby enrich itself.

62. To carry out the conspiracy, the Defendant acted in concert with Volkswagen, Audi, Porsche and others unknown, each directing their own and each other's agents, servants and employees to knowingly or unknowingly carry out unlawful and wrongful acts including:

- a) coordinating their efforts. Senior employees of the Defendant corresponded through telephone conversations, emails, reports, and in personal meetings in Canada, the United States, Germany and elsewhere to design and engineer the

Software and to supply and sell the Software for installation in the Vehicles in order to have the Vehicles certified by the EPA, and imported into Canada;

- b) coordinating a regulatory compliance strategy that involved deliberately misleading the EPA and Environment Canada about the Software and the Vehicles in order to unlawfully import the Vehicles into Canada; and
- c) coordinating a strategy not to disclose the incorporation and use of the Software and the Defeat Device in the Vehicles and not to warn the Plaintiffs, the Class Members, the public and/or the U.S. and Canadian regulators of the use of the Software and the Defeat Device even after the investigations began in the US in the first half of 2014.

63. The Defendant knew that the Plaintiffs and Class Members would not pay the selling price of the Vehicles if the Class Members were aware of the Vehicles' high emissions and illegal importation. The purpose and result of the conspiracy was to deceive the Plaintiffs and Class Members into purchasing the Vehicles at an inflated price and to thereby increase the Defendant's profits from its sale of its Software at the expense of the Class Members. The Defendant knew or ought to have known that the Class Members would be injured by the conspiracy.

NEGLIGENCE

64. The Defendant owed a duty of care to the Plaintiffs and the Class Members to ensure that the Software was engineered, designed, developed, tested, manufactured, supplied and sold free of dangerous defects, including a Defeat Device and that the Software was engineered, designed, developed, manufactured, supplied and sold in compliance with the Emissions Standards. Moreover, the Defendant owed the Plaintiffs and Class Members a duty to warn that the Vehicles contained the Software and a Defeat Device.

65. The Defendant knew or ought to have known that the Plaintiffs and Class Members would trust and rely on the Defendant's skill and integrity in engineering, designing, developing,

testing, manufacturing, supplying and selling the Software. The Defendant also knew or ought to have known that, if the Software contained dangerous defects or was non-compliant with the Emissions Standards, the value of the Vehicles would diminish and the Vehicles could be subject to recalls, both of which would cause damages to the Plaintiffs and Class Members.

66. The reasonable standard of care expected in the circumstances required the Defendant to act fairly, reasonably, honestly, candidly and with due care in the course of engineering, designing, developing, testing, manufacturing, supplying and selling the Software. The Defendant, through its employees, officers, directors and agents, failed to meet the reasonable standard of care.

67. The Defendant's negligence resulted in damage to the Plaintiffs and the other Class Members. Had the Defendant complied with the required standard of care, the Vehicles would have been sold without the Software as a Defeat Device.

68. As a result of the disclosures that the Vehicles contained the Software as a Defeat Device and that the Vehicles had been illegally imported, the Plaintiffs and the Class Members suffered damages.

GENERAL AND SPECIAL DAMAGES

69. As a result of the dangerous and harmful defects in the Vehicles, the failure by the Defendant to disclose the existence of the Software and the Defeat Device, the extent of the Vehicles' emissions and pollutants, including NOx, and the September 18, 2015, November 2, 2015 and November 19, 2015 disclosures, the Class suffered damages. Volkswagen, Audi and Porsche have decided to withdraw the Vehicles from the marketplace in Canada and the U.S. The value of each of the Vehicles is reduced. The Class Members must expend the time to have

their Vehicles repaired and be without their Vehicles. The Defendant should compensate each Class Member for their losses and inconvenience.

70. The Class Members cannot get their Vehicles repaired immediately because there is no fix available for the Vehicles. The Plaintiffs and many of the other Class Members live in Provinces and Territories that require emissions testing when vehicles are sold or their permits renewed. As such, the Class Members face the loss of use or the denial of the right to use the Vehicles under local, Provincial, Territorial or Federal laws or regulations, and the costs associated with the use of other automobiles or other expenses as a result thereof.

71. The Class Members face the loss of the right or ability to sell, or exercise lease purchase options for, the Vehicles.

72. The Class Members have or will have lost time, lost income, and suffered inconvenience and special damages arising from any necessary repair to the Vehicles, loss of use of the Vehicles during any such repair periods, and the cost associated with the use of other automobiles or other expenses during such periods.

73. Because the emissions testing regime in the Provinces relies on the integrity of vehicles' EPA testing and EPA Certificates as a baseline, the Class Members face the prospect that Canada's Provinces and Territories may change their testing regulations so that the Vehicles will fail unless the on-road emissions are once again brought back into compliance with the Emissions Standards. This uncertainty further depresses the resale market for the Vehicles.

74. In order for the Vehicles to be brought in line with the Emissions Standards, the Vehicles' performance standards and fuel efficiency will have to be lowered and reduced. As a result, and among other things, the value of each of the Vehicles will be irreparably diminished.

75. The Plaintiff pleads that the Class Members' damages were sustained in Ontario and in the rest of Canada.

PUNITIVE DAMAGES

76. The Defendant's conduct described above was deliberate, unlawful, arrogant, high-handed, outrageous, reckless, wanton, entirely without care, deliberate, secretive, callous, willful, disgraceful and in contemptuous disregard of the rights and interests of the Class Members and the public. Moreover, the Defendant took additional and extraordinary measures to conceal the conduct in question, the Software and the Defeat Device, and the actual emissions made by the Vehicles from the Class Members and regulators. The Defendant is liable to pay punitive and aggravated damages.

THE RELEVANT STATUTES

77. The Plaintiffs plead and rely upon the following statutes:

- a) *Class Proceedings Act, 2002*, SO 1992, c 6, as amended;
- b) *Competition Act*, R.S. 1985, c. C-34, as amended, and the regulations thereto, sections 36(1) and 52(1);
- c) *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, as amended, and the regulations thereto;
- d) *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, and the regulations thereto, sections 21, 22, and 23;
- e) *Climate Change and Emissions Management Act*, S.A 2003, c. C-16.7, as amended, and the regulations thereto, section 60;

- f) *Motor Vehicle Act*, R.S.B.C 1996, c. 318, as amended, and the regulations thereto, sections 47, 48, 49, and 50;
- g) *The Climate Change and Emissions Reductions Act*, C.C.S.M, c C135, as amended, and the regulations thereto, sections 13 and 14;
- h) *The Environmental Management and Protection Act*, S.S 2010, c E-10.22, as amended, and the regulations thereto, sections 51, 52, 53, and 54;
- i) *Environmental Quality Act*, C.Q.L.R c. Q-2, as amended, and the regulations thereto, sections 51, 52, and 53;
- j) *Clean Air Act*, S.N.B 1997, c. C-5.2, as amended, and the regulations thereto, section 46;
- k) *Environment Act*, S.N.S 1994-95, c. 1, as amended, and the regulations thereto, sections 111 and 112;
- l) *Environmental Protection Act*, R.S.P.E.I 1988, c. E-9, as amended, and the regulations thereto, section 25;
- m) *Environmental Protection Act*, S.N.L 2002, c. E-14.2, as amended, and the regulations thereto, section 22;
- n) *Environmental Protection Act*, R.S.N.W.T 1988, c. E-7, as amended, and the regulations thereto, section 34;
- o) *Environment Act*, R.S.Y 2002, c. 76, as amended, and the regulations thereto, section 145;
- p) *Environmental Protection Act*, R.S.N.W.T (Nu) 1988, c. E-7, as amended, and the regulations thereto, section 34; and
- q) *Negligence Act*, R.S.O. 1990, c. N.1, as amended and the equivalent Provincial and Territorial legislation.

PLACE OF TRIAL

78. The Plaintiffs propose that this action be tried in the City of Toronto.

SERVICE

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

- a) in respect of real or personal property in Ontario (*Rule 17.02(a)*);
- b) in respect of the interpretation or enforcement of a deed, will, contract or other instrument in respect of real or personal property in Ontario (*Rule 17.02(c)*);
- c) in respect of a contract where the contract was made in Ontario, the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario, and a breach of contract has been committed in Ontario (*Rule 17.02(f)*);
- d) in respect of a tort committed in Ontario (*Rule 17.02(g)*);
- e) authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario (*Rule 17.02(n)*) and,
- f) brought against a person ordinarily resident or carrying on business in Ontario (*Rule 17.02 (p)*).

March 29, 2016

SISKINDS LLP

Barristers & Solicitors
100 Lombard Street, Suite 302
Toronto, ON M5C 1M3

CHARLES WRIGHT (LSUC# 35699Q)

Tel: 519-660-7753
Fax: 519-660-7754

SUTTS, STROSBERG LLP

Lawyers
600 - 251 Goyeau Street
Windsor ON N9A 6V4

HARVEY T. STROSBERG, Q.C. (LSUC# 126400)

Tel: 519.561.6228

WILLIAM V. SASSO (LSUC# 12134I)
Tel: 519-561-6222
Fax: 519.561.6203

ROY O'CONNOR LLP
200 Front Street West, Suite 2300
Toronto, Ontario M5V 3K2

KOSKIE MINSKY LLP
Lawyers
20 Queen St. W.
Suite 900, Box 52
Toronto, ON M5H 3R3

DAVID F. O'CONNOR (LSUC# 33411E)
J. ADAM DEWAR (LSUC# 46591J)
Tel: 416-362-1989
Fax: 416-362-6204

KIRK BAERT (LSUC# 30942O)
Tel: 416-595-2117
Fax: 416-977-3316

BRANCH MACMASTER LLP
1410-777 Hornby Street
Vancouver, British Columbia V6Z 1S4

MCKENZIE LAKE LAWYERS LLP
Lawyers
140 Fullarton Street, Suite 1800
London ON N6A 5P2

WARD K. BRANCH
Tel: 604-654-2999
Fax: 604-684-3429

MICHAEL PEERLESS (LSUC # 34127P)
Tel: 519.667.2644

**CAMP FIORANTE MATTHEWS
MOGERMAN**
#400-856 Homer Street
Vancouver, British Columbia V6B 2W5

SABRINA LOMBARDI (LSUC# 52116R)
Tel: 519.667.2645
Fax: 519.672.2674

REIDAR M. MOGERMAN
Tel: 604-689-7555
Fax: 604-689-7554

ROCHON GENOVA LLP
Lawyers
121 Richmond St. W., Suite 900
Toronto, ON M5H 2K1

JOEL ROCHON
Tel: 416-548-9874
Fax: 416-363-0263

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

SISKINDS LLP
Barristers & Solicitors
100 Lombard Street, Suite 302
Toronto, ON M5C 1M3
CHARLES WRIGHT
Tel: 519-660-7753/Fax: 519-660-7754

SUTTS, STROSBERG LLP
600-251 Goyeau Street
Windsor, ON N9A 6V4
HARVEY T. STROSBERG
WILLIAM V. SASSO
Tel: 519-561-6222/Fax: 519-561-6203

ROY O'CONNOR LLP
200 Front Street West, Suite 2300
Toronto, ON M5V 3K2
DAVID F. O'CONNOR
J. ADAM DEWAR
Tel: 416-362-1989/Fax: 416-362-6204

KOSKIE MINSKY LLP
20 Queen Street W., Suite 900
Toronto, ON M5H 3R3
KIRK BAERT
Tel: 416-595-2117/Fax: 416-977-3316

BRANCH MACMASTER LLP
1410-77 Hornby Street
Vancouver, BC V6Z 1S4
WARD K. BRANCH
Tel: 604-654-2999/Fax: 604-684-3429

MACKENZIE LAKE LAWYERS LLP
140 Fullarton Street, Suite 1800
London, ON N6A 5P2
MICHAEL PERLESS
SABRINA LOMBARDI
Tel: 519-667-2645/Fax: 519-672-2674

CAMP FIORANTE MATTHEWS MOGERMAN
400-865 Homer Street
Vancouver, BC V6B 2W5
REIDAR M. MOGERMAN
Tel: 604-679-7555/Fax: 604-689-7554

ROCHON GENOVA LLP
1221 Richmond St. W., Suite 900
Toronto, ON M5H 2K1
JOEL ROCHON
Tel: 416-548-9784/Fax: 416-363-0263