



Newsletter DEJF – November 2022

Dear Friends,

I appreciate that matters are taking a long time but I am happy to report to you we are progressing as expected. Your claims against VW in France and Belgium are moving forward.

The Foundation is also expanding our efforts to work with fleet claimants, and should you have any contacts who can help please let us know.

As has now been widely reported in the press, in May the settlement of the English and Welsh VW NOx Emissions Group Litigation was concluded by an out of court agreement in a group action which concerned claims, which first became public in September 2015, made in respect of the two mode software installed in certain Volkswagen Group vehicles with EA189 diesel engines.

The terms and conditions of the settlement are confidential.

No admissions in respect of liability, causation or loss have been made by any of the defendants in the group action as part of the settlement. In Volkswagen's view, the legal costs of litigating this case to a six-month trial in England, and then in relation to any further appeals by either party, were such that settlement was the most prudent course of action commercially.

The agreed settlement resolves the circa 91,000 claims that were being brought against various Volkswagen Group and dealer entities in that group action in England & Wales brought on behalf of consumers.

As a consequence of the settlement, a payment of £193m is being made to the claimants by the Volkswagen Group. A separate contribution is being made by the Volkswagen Group towards the claimants' legal costs and other fees.

The Volkswagen Group took the opportunity of the settlement to sincerely apologise to their customers for the two mode software installed in the EA189 vehicles.

Commenting on the settlement, Philip Haarmann, Chief Legal Officer of Volkswagen AG, said:

“The Volkswagen Group is pleased that we have been able to conclude this long running litigation in England & Wales. The settlement is another important milestone as the Volkswagen Group continues to move beyond the deeply regrettable events leading up to September 2015.”

The Foundation believes that the settlement in England serves to strengthen its resolve in delivering justice to you, our participating claimants.

I am pleased, therefore, to indicate where we are in the various cases we are prosecuting before the courts:

Volkswagen – We are progressing the cases in France and Belgium. In France, the next hearing is scheduled for 10th November.

Mercedes – 26 October 2022 was the deadline for Mercedes to submit its statement of defence on admissibility to the Amsterdam Court. We now wait for an oral hearing to be scheduled.

Renault - The next important date is 8 December 2022 when there is an oral hearing on several different distinct elements of the case. We will then wait to hear the court's decision on those specifics and determine whether we need to adjust our strategy.

Stellantis – 1 November 2022 was the deadline for Stellantis et al.'s statement of defense in the appeal regarding FCA. For Opel/PSA, the defendants have until 9 November 2022 to submit a statement of defence. Oral hearings for both are expected to be in the first quarter of 2023.

We also consider the following legal rulings are relevant to our ongoing work on your behalf:

The Court of Justice of the European Union handed down three relevant judgments in the following cases: Cases C-128/20 | GSMB Invest, C-134/20 | Volkswagen and C-145/20 | Porsche Inter Auto and Volkswagen.

According to the CJEU, such software is a "defeat device" prohibited by Regulation 715/2007 on type-approval of motor vehicles and emissions from passenger cars. The vehicle does not therefore comply with the technical regulations.

We are therefore faced with a lack of conformity in the vehicle sold, as it does not have the "quality" that the consumer would expect [art. 2.2.d) Directive 1999/44/EC]. And, for various reasons, for the CJEU this lack of conformity is not "of minor importance" for the purposes of art. 3.6 of the aforementioned Directive.

Therefore, if the remedy offered to the consumer is not satisfactory, the consumer is free to terminate the contract as the lack of conformity is not minor.

These judgments confirm (and close the issue now): **Software in diesel vehicles which reduces the effectiveness of the emission control system at normal temperatures during most of the year constitutes a prohibited defeat device.**

You may read the press release here (in English below) and find the links to the specific judgments here:

https://curia.europa.eu/juris/document/document_print.jsf?mode=lst&pageIndex=0&docid=262935&part=1&doclang=EN&text=&dir=&occ=first&cid=63373

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=262933&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=62166>

<https://curia.europa.eu/juris/documents.jsf?num=C-134/20>

Additionally, the opinion on Kokott (**Case C-312/21**) regarding competition is also positive: "57. In that context, a further structural and teleological parallel between the regulatory area of Directive 93/13 and that of antitrust damages is that, in both areas, the claimants contribute to the achievement of EU objectives, such as the functioning of the internal market or the protection of fair competition, by enforcing their own rights. This is because, contrary to the Kingdom of Spain's submission, Directive 93/13 aims not only to compensate the consumer concerned but also to put an end to the use of

unfair terms as a whole. Similarly, the right to antitrust damages serves not only a compensatory function, but also a dissuasive function, thereby effectively enforcing competition law. (23) Such a **function of the claimant as a ‘defender’ or ‘enforcer’ of EU interests** can also be found, for example, in the case of actions brought by competitors in State aid or public procurement law **or in the case of actions brought by associations in environmental law.”** If you would like, you may read [the complete judgement](#), ([CURIA - Documents \(europa.eu\)](#))

We appreciate it may feel like things are not progressing at pace, but please be assured we always anticipated this would take some years. While we always hope that the manufacturers are willing to settle, we are fully prepared to pursue all claims necessary in the courts. We will, as always, keep you updated.

Kind regards,

A handwritten signature in dark ink, appearing to read 'Andrew Goodman', with a long horizontal flourish extending to the right.

Andrew Goodman
Chairman of the Board,
Diesel Emissions Justice Foundation



PRESS RELEASE No 124/22

Luxembourg, 14 July 2022

Judgments of the Court in Cases C-128/20 | GSMB Invest, C-134/20 | Volkswagen and C-145/20 | Porsche Inter Auto and Volkswagen

Software in diesel vehicles which reduces the effectiveness of the emission control system at normal temperatures during most of the year constitutes a prohibited defeat device

Since such a vehicle default is not minor, rescission of the sale contract in respect of the vehicle is not, in principle, precluded

Purchasers of Volkswagen vehicles fitted with software that reduces the recirculation of a vehicle's pollutant gases according to, among other things, the temperature detected are requesting that the Austrian courts annul sales contracts they concluded between 2011 and 2013.

According to the information provided by those courts, that software ensures compliance with the limits laid down at EU level for emissions of nitrogen oxide (NOx) only when the outside temperature is between 15 and 33 °C (the temperature window). Outside of that window, the rate of exhaust gas recirculation (EGR) reduces in a linear way down to zero, which leads to those limits being exceeded.

That temperature window results from a software update in the vehicles at issue carried out by Volkswagen with a view to replacing software prohibited under EU law. The German Federal Office for Motor Vehicles had authorised that update, having concluded that it did not constitute a prohibited defeat device.

The Austrian Supreme Court, the Regional Court, Eisenstadt, and the Regional Court, Klagenfurt, referred a number of questions to the Court concerning the lawfulness of such a temperature window and the rights available to purchasers, in so far as they are consumers, under the EU law in force at the time of the facts in the case.

By today's judgments, the Court finds that **a device which ensures compliance with the NOx emission limits only in the temperature window does in principle constitute a defeat device prohibited under Article 5(2) of Regulation No 715/2007.**¹

The Court points out, in that regard, first, that ambient temperatures below 15 °C are to be considered as normal within the territory of the European Union. Second, emission limits laid down at EU level must be observed even where those temperatures are significantly below 15 °C. Accordingly, software such as that at issue reduces the effectiveness of the emission control system under conditions of normal use.

For that reason, the mere fact that that device contributes to protecting separate engine parts such as the EGR

¹ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1).