

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO 500-06-000915-187

ZULLY LILIANA SALAZAR PASAJE, domiciled and

[REDACTED]

Applicant

-VS-

BMW CANADA INC., legal person having its head office at 50 Ultimate Drive, Richmond Hill, Province of Ontario, L4S 0C8

and

BAYERISCHE MOTOREN WERKE AG, legal person having its head office at Petuelring 130, 80788, in the City of Munich, Germany

and

BMW OF NORTH AMERICA, LLC, legal person having its head office at 300 Chestnut Ridge road, City of Woodcliff Lake, State of New Jersey, 07677, United States of America

and

BMW MANUFACTURING CO., LLC, legal person having its head office at 1400 Highway 101 South, City of Greer, State of South Carolina, 29651, United States of America

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:

I. THE CLASS

1. Applicant wishes to institute a class action on behalf of the following class of which she is a member, namely:

Class:

All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with juridical personality, resident in Canada (subsidiarily Quebec), who purchased and/or leased a BMW that was recalled by Transport Canada under Recall #2017-470 and Recall #2017-588, including the BMW 1 Series (2008 to 2011), BMW 3 Series (2006 to 2011), BMW 5 Series (2007 to 2011), BMW X3 (2007 to 2011), BMW X5 (2007 to 2010), BMW Z4 (2007 to 2011).

(hereinafter referred to as the "**Class**")

II. THE PARTIES

2. Applicant is the owner of a 2007 BMW X3 vehicle (the "**Vehicle**");
3. Applicant purchased her vehicle for personal use and is a consumer within the meaning of Quebec's *Consumer Protection Act* ("**CPA**") and buyer within the meaning of the *Civil Code of Quebec* ("**CCQ**");
4. Defendant BMW Canada Inc. (hereinafter "**BMW Canada**") is a Canadian corporation with its head office in Richmond Hill, Ontario, as it appears from a copy of an extract from the *Registraire des entreprises*;
5. Defendant Bayerische Motoren Werke (hereinafter "**BMW AG**") is a German corporation with its head office in Munich, Germany. BMW AG is the parent corporation of and controls Defendants BMW North America, LLC, BMW Manufacturing Co. LLC and BMW Canada Inc. BMW AG designs, manufactures and sells automobiles (under the BMW, Mini, and Rolls-Royce brands) through independent retailers, outlets, and authorized dealerships in North America and throughout the world. In 2016, BMW AG's revenue exceeded €86 billion and its profits exceeded €7.5 billion;
6. Defendant BMW of North America, LLC (hereinafter "**BMW NA**") is an American corporation with its head office in New Jersey. It is a subsidiary of Defendant BMW AG;
7. Defendant BMW Manufacturing Co. LLC (hereinafter "**BMW Manufacturing**") is an American corporation with its head office in South Carolina. It is a subsidiary of BMW AG

and it is part of its global manufacturing network;

8. During the class period, Defendants BMW Canada, BMW NA, BMW Manufacturing, and BMW AG (collectively, "**BMW**"), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and/or sold automobiles throughout Canada, including within the province of Quebec;
9. The BMW Defendants are "*merchants*" within the meaning of the *CPA* and "*sellers*" within the meaning of the *CCQ*;
10. Given the close ties between the BMW Defendants and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

11. In 2009 the Applicant purchased a 2007 BMW X3 (VIN: WBXPC93437WF00420);
12. At the time of purchase, Applicant was under the impression that she was purchasing a vehicle that was free of any production issues, as well as any design and/or manufacturing defects;
13. Unbeknownst to her, she overpaid for the purchase price, as her BMW was in fact suffering from a serious defect;
14. The Applicant was entitled to expect, and rightly expected, that BMW guarantee the quality of the products it designs, produces, markets, sells and services;
15. However, in December of 2017, BMW mailed out a document to Applicant titled "Recall Campaign No. 2017-470: Engine PCV Blow-by Heater" (the "**Recall Notice**");
16. The Recall Notice advises Applicant, *inter alia*, of the following:

This notice is sent to you in accordance with the requirement of the Canadian Motor Safety Act. BMW AG has determined that a defect, which relates to motor vehicle safety, may exist in certain (BMW) ... vehicles equipped with an N52K or N52T 6 cylinder engine. Our records indicate that you are the owner or lessee of a potentially affected vehicle.

Why are we contacting you?

This recall involves the Positive Crankcase Ventilation (PCV) blow-by heater component, which is mounted on the engine intake manifold

on your vehicle. **Please note that at the present time, we do not have parts available.** BMW will notify you via another letter as soon as we can complete the recall on your vehicle.

What could happen?

The PCV blow-by heater incorporates a heating element, which is designed to prevent the PCV valve from freezing in cold ambient temperatures, due to condensation that can form in the PCV system during engine operation. The subject PCV blow-by heater could overheat due to component production inconsistencies, which could result in a short circuit in the heating element, caused by a build-up of moisture in the associated electrical components.

If the PCV blow-by heater overheats, the surrounding plastics could melt and potentially cause a fire, which could increase the risk of injury and/or damage to property.

This potential overheating of the PCV blow-by heater typically occurs while the vehicle is being driven, however it is possible that this could also occur after the vehicle has been parked, with the engine turned off. **For this reason, BMW recommends parking your vehicle outdoors until the recall repair has been performed.**

17. Applicant learnt of this Recall Notice towards the end of December, 2017, while she was travelling in Arkansas, in the United States, with her husband and two young children (22-month old and 8-month old);
18. Concerned for the safety of her family and herself, Applicant immediately brought her vehicle to a BMW dealership in Arkansas called "*BMW of Northwest Arkansas*";
19. BMW of Northwest Arkansas informed Applicant that it was indeed dangerous to drive her vehicle, but that they could not perform the repairs because it was a Canadian vehicle (and in any event, they did not have the replacement piece available);
20. Afraid to die, Applicant had to hire and pay a driver to drive her BMW closer to the Canadian border. She paid the driver approximately \$3,800.00 USD, which includes his fee to drive her vehicle back to Canada, as well as his hotels and meals for 8 days. According to the currency conversion available on the Bank of Canada's website, the amount of \$3800.00 USD is equal to **\$4,905.04** Canadian dollars as of March 22nd, 2018;
21. Applicant had to rent a separate vehicle for her and her family to use to drive home because the Recall Notice made her fear for their safety in her BMW. This cost Applicant an additional \$1,500.00 USD, which, according to the currency conversion available on the Bank of Canada's website, is equal to **\$1,936.20** Canadian dollars as of March 22nd, 2018;

22. Furthermore, Applicant and her family had to wait an additional 7 days in Plattsburgh, New York, for the driver to arrive. During this time, they incurred additional costs of over \$1000.00 USD for a hotel room and other related expenses, which, according to the currency conversion available on the Bank of Canada's website, is equal to **\$1,290.80** Canadian dollars as of March 22nd, 2018;
23. Following her return home to Quebec City, Canada, on February 21st, 2018, Applicant then brought her vehicle to *BMW Ville de Québec* on March 2nd, 2018;
24. From February 21st, 2018 to March 2nd, 2018, Applicant had to borrow a vehicle from a friend, since her BMW was not safe to drive according to the Recall Notice;
25. The staff at *BMW Ville de Québec* confirmed to her that the repair piece was not available and that BMW would eventually inform her by a second letter sent by mail once the replacement part becomes available, which could take several more months;
26. Applicant requested that *BMW Ville de Québec* provide her with a courtesy vehicle until BMW receives the replacement part and repairs her vehicle;
27. Not only did *BMW Ville de Québec* refuse to provide Applicant with a courtesy vehicle, but they advised her that it was safe to drive her vehicle in its current condition, which is contrary to what BMW admits in the Recall Notice;
28. *BMW Ville de Québec* claimed that they were receiving their instructions from BMW Canada;
29. Applicant left her vehicle at *BMW Ville de Québec* and to date is unable to make use of her BMW;
30. The recall situation also forced Applicant to incur additional costs because she has to use and pay for taxis to get her and her family around. To date Applicant spent approximately **\$300.00** in taxis (from March 19th to March 23rd, 2018);
31. As of the filing of this Application, the replacement parts have not become available and BMW has not performed the required repairs (Applicant's vehicle remains at *BMW Ville de Québec*), all the while refusing to provide Applicant with a courtesy car, despite her several verbal requests and two (2) written request made by email on March 20th and 21st, 2018;
32. Applicant has suffered ascertainable loss as a result of BMW's omissions and/or misrepresentations associated with the recall/production issue, including, but not limited to the losses listed at paragraphs 20, 21, 22 and 30 above, in addition to: (i) overpayment for the vehicle itself; (ii) substantially lower resale values associated with her vehicle because the problems with the PCV blow-by heater have become particularly known in the industry (BMW has recalled over one million vehicles due to this issue, which is said to affect 1 in 5 BMWs on the road); (iii) the likely increase in

- insurance premiums; (iv) moral damages; and (v) trouble and inconvenience;
33. Had Applicant been aware of the safety defect, she would have likely never purchased the 2007 BMW X3 (and certainly not paid such a high price);
 34. Applicant's damages are a direct and proximate result of BMW's misconduct;
 35. In consequence of the foregoing, the Applicant is justified in claiming damages from BMW in the amount of \$8,432.02 (see paragraphs 20, 21, 22 and 30 above), in addition to a \$5000.00 reduction of the purchase pursuant to section 272 c) of the CPA;
 36. Additionally, Applicant is entitled to claim and does hereby claim from BMW \$1000.00 per Class member on account of punitive damages;
 37. BMW's patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

38. Every Class member purchased or leased a vehicle from BMW that was defective (as admitted by BMW in their recall notices);
39. BMW's defective vehicles that were sold/leased in Canada were at risk of overheating of the PCV blow-by heater while the vehicle was being driven and even after the vehicle had been parked, with the engine turned off, causing injury and/or damage to property;
40. It is for this reason that BMW recommended to Class members that they park their BMWs outdoors until both recall #2017-470 and #2017-588 repairs are performed;
41. For the entire Winter (December 2017 through March 2018) Class members were forced to park their vehicles outdoors. This situation is ongoing;
42. In the province of Quebec, the Winter months are filled with snowstorms and temperatures often drop to below minus 20 degrees Celsius and even more;
43. Parking their vehicles outdoors inevitably causes a serious inconvenience and prejudice to Class members (for example, they will have to spend more money on gas warming up their vehicles that were frozen outdoors overnight);
44. All Class members are entitled to expect that BMW (a luxury brand that charges a premium for their luxury vehicles) guarantee the quality of the vehicles they design, produce, market, sell and service and that BMW inform them of important facts concerning these vehicles;

45. Consequently, all Class members overpaid BMW when they purchased/leased one of BMW's defective vehicles;
46. By reason of BMW's unlawful conduct, Applicant and members of the Class have suffered damages, which they may collectively claim against BMW;
47. Each member of the Class is justified in claiming at least one or more of the following as damages:
 - a) Diminished value of the defective BMW in terms of an overpayment for the purchase price or lease payments;
 - b) Lower resale value;
 - c) Loss of use of their defective BMWs;
 - d) Expenditures for rental vehicles;
 - e) Trouble and inconvenience (including being forced to park outdoors);
 - f) Moral damages; and
 - g) Punitive damages;
48. All of these damages to the Class members are a direct and proximate result of BMW's misconduct;
49. In light of the foregoing, the questions of fact and law raised and the recourses sought by this Application are very similar with respect to each Class member;
50. The claims of every Class member are founded on very similar facts to the Applicant's claim;
51. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
52. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
 - a) Did BMW negligently perform its duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, sell and/or lease non-defective vehicles?
 - b) Did BMW misrepresent their vehicles to Class members as safe or fail to adequately disclose to Class members the true defective nature of the recalled BMWs?
 - c) Did BMW fail its obligation under section 228 CPA to inform Class members of an important fact?

- d) Did BMW conceal and/or remain silent concerning an essential element of the contract (i.e. safety)?
- e) Is BMW responsible for all related damages (including, but not limited to: the diminished value of the recalled BMWs in terms of an overpayment for the purchase price or lease payments, the lower resale value, the loss of use of the recalled vehicles, expenditures for rental vehicles, moral damages and trouble and inconvenience to Class members as a result of the problems associated with the recalled vehicles) and in what amount?
- f) Is BMW responsible to pay punitive damages to Class members and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

- 53. According to the information available Transport Canada's website, it appears that BMW declared that, in Canada, 79,616 vehicles are affected by recall #2017-470 and 75,744 vehicles are affected by recall #2017-588;
- 54. The size of the Class is conservatively estimated to include thousands of Class members in the province of Quebec and over 150,000 Class members across Canada;
- 55. Class members are very numerous and are dispersed across Quebec, across Canada and elsewhere;
- 56. The names and addresses of all persons included in the Class are not known to the Applicant, however, are likely in the possession of BMW;
- 57. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class to obtain mandates and to join them in one action;
- 58. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

- 59. Applicant requests that she be appointed the status of representative plaintiff for the following principal reasons:
 - a) she is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
 - b) she is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;

- c) her interests are not antagonistic to those of other members of the Class;
60. Additionally, Applicant respectfully adds that:
- a) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
 - b) she initially contacted her attorneys to mandate them to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of BMW's illegal behavior and so that BMW can be held accountable for its misconduct;
 - c) she cooperates and will continue to fully cooperate with her attorneys, who have experience in consumer protection-related class actions;
 - d) she has read this Application prior to its court filing and understands the nature of the action;
61. As for identifying other Class members, Applicant draws certain inferences from the situation, notably from the information on Transport Canada's website that there are more than 150,000 affected BMW vehicles. Applicant realizes that by all accounts, there is a very important number of Class members that find themselves in an identical situation, and that it would not be useful for her to attempt to identify them given their sheer number;
62. For the above reasons, Applicant respectfully submits that her interest and competence are such that the present class action could proceed fairly and in the best interest of Class members;

IV. DAMAGES

63. During the class period BMW has likely generated billions of dollars while intentionally choosing to ignore the law in Quebec as well as in other Canadian provinces, by cutting corners on costs (resulting in the production of defective BMWs), failing to inform Class members of an important fact, neglecting to repair the defective BMWs in a timely fashion and refusing to provide Class members with a courtesy vehicle until the replacements parts become available;
64. BMW's misconduct is unconscionable and to the detriment of vulnerable Canadian consumers;
65. Consequently, BMW has breached several obligations imposed on them by consumer protection and trade practice legislation in Quebec and other Canadian provinces, including:

- a) Quebec's *Consumer Protection Act*, including sections 37, 38, 41, 53, 215, 219, 220(a), 221(g), and 228, thus rendering sections 253 or 272 applicable;
 - b) The *Civil Code of Quebec*, including sections 1399-1401, 1407, 1726, 1728, 1729, 1730;
 - c) Sale of Goods legislation in force in Canadian provinces outside of Quebec, notably the sections providing causes of action for breach of implied conditions of merchantability and fitness for purpose;
 - d) Consumer protection and trade practice legislation in the other Canadian jurisdictions, notably the sections concerning false, misleading or deceptive representations;
66. Moreover, BMW failed in its obligation and duty to act in good faith and with honesty in their representations and in the performance of their obligations;
67. In light of the foregoing, the following damages may be claimed solidarily against the Defendants:
- a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
 - b) punitive damages, in the amount of \$1000.00 per Class member, for the breach of obligations imposed on BMW pursuant to section 272 *CPA* as well as the consumer protection and trade practice legislation in the other Canadian jurisdictions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

68. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
69. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Representative Plaintiff's action against Defendants on behalf of all the Class Members;

DECLARE the Defendants solidarily liable for the damages suffered by the Applicant and each of the Class Members;

CONDEMN the Defendants, solidarily, to pay Zully Liliana Salazar Pasaje the sum of \$8,432.02 in compensation of the damages suffered;

CONDEMN the Defendants, solidarily, to pay Zully Liliana Salazar Pasaje the sum of

\$5,000.00 pursuant to paragraph c of section 272 CPA;

CONDEMN the Defendants, solidarily, to pay to each Class member a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants, solidarily, to pay to each Class Member the sum of \$1000.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a 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 and costs;

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

CONDEMN the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

70. The interests of justice favour that this Application be granted in accordance with its conclusions;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an originating application in damages;

APPOINT the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

Class:

All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with juridical personality, resident in Canada (subsidiarily Quebec), who purchased and/or leased a BMW that was recalled by Transport Canada under Recall #2017-470 and Recall #2017-588, including the BMW 1 Series (2008 to 2011), BMW 3 Series (2006 to 2011),

BMW 5 Series (2007 to 2011), BMW X3 (2007 to 2011), BMW X5 (2007 to 2010), BMW Z4 (2007 to 2011).

(hereinafter referred to as the “Class”)

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

- a) Did BMW negligently perform its duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, sell and/or lease non-defective vehicles?
- b) Did BMW misrepresent their vehicles to Class members as safe or fail to adequately disclose to Class members the true defective nature of the recalled BMWs?
- c) Did BMW fail its obligation under section 228 *CPA* to inform Class members of an important fact?
- d) Did BMW conceal and/or remain silent concerning an essential element of the contract (i.e. safety)?
- e) Is BMW responsible for all related damages (including, but not limited to: the diminished value of the recalled BMWs in terms of an overpayment for the purchase price or lease payments, the lower resale value, the loss of use of the recalled vehicles, expenditures for rental vehicles, moral damages and trouble and inconvenience to Class members as a result of the problems associated with the recalled vehicles) and in what amount?
- f) Is BMW responsible to pay punitive damages to Class members and, if so, in what amount?

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

GRANT the Representative Plaintiff's action against Defendants on behalf of all the Class Members;

DECLARE the Defendants solidarily liable for the damages suffered by the Applicant and each of the Class Members;

CONDEMN the Defendants, solidarily, to pay Zully Liliana Salazar Pasaje the sum of \$8,432.02 in compensation of the damages suffered;

CONDEMN the Defendants, solidarily, to pay Zully Liliana Salazar Pasaje the sum of \$5,000.00 pursuant to paragraph *c* of section 272 *CPA*;

CONDEMN the Defendants, solidarily, to pay to each Class member a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants, solidarily, to pay to each Class Member the sum of \$1000.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a 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 and costs;

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

CONDEMN the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

DECLARE that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of the Globe and Mail, the National Post, Le Journal de Montréal and the MONTREAL GAZETTE;

ORDER that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice of a Class Action";

ORDER the Defendants to send an Abbreviated Notice by regular mail to each Class Member, to their last known physical address, with the title "Notice of a Class Action";

ORDER the Defendants to send an Abbreviated Notice by e-mail to each Class Member, to their last known e-mail address, with the subject line "Notice of a Class Action";

ORDER the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class Members, including their names, addresses, phone numbers and email addresses;

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publication fees.

Montréal, March 23rd, 2018



LPC AVOCAT INC.

PER: ME JOEY ZUKRAN

Counsel for Applicant

COPIE CONFORME / TRUE COPY



LPC AVOCAT INC.

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P.)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application


In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, March 23rd, 2018

COPIE CONFORME / TRUE COPY


LPC AVOCAT INC.


LPC AVOCAT INC.

PER: ME JOEY ZUKRAN
Counsel for Applicant

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.C.P.)

TO: BMW CANADA INC.
50 Ultimate Drive
Richmond Hill, Ontario, L4S 0C8
Defendant

BMW OF NORTH AMERICA, LLC
300 Chestnut Ridge road
Woodcliff Lake, NJ, 07677, USA
Defendant

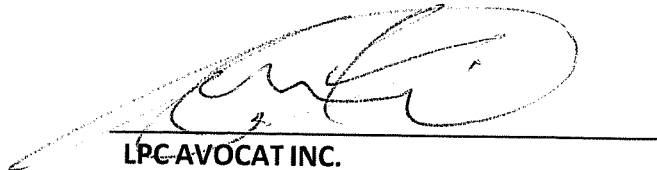
BMW MANUFACTURING CO., LLC
1400 Highway 101 South
Greer, South Carolina, 29651, USA
Defendant

Bayerische Motoren Werke AG
Petuelring 130, 80788,
Munich, Germany
Defendant

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montréal, March 23rd, 2018



LPC-AVOCAT INC.

PER: ME JOEY ZUKRAN
Counsel for Applicant

COPIE CONFORME / TRUE COPY



LPC AVOCAT INC.

23 MARS 2000

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

ZULLY LILIANA SALAZAR PASAJE

Applicant

-vs.-

BMW CANADA INC.

-and-

BAYERISCHE MOTOREN WERKE AG

-and-

BMW OF NORTH AMERICA, LLC

-and-

BMW MANUFACTURING CO., LLC

Defendants

APPLICATION TO AUTHORIZE THE BRINGING
OF A CLASS ACTION
(ARTICLES 571 AND FOLLOWING C.C.P.)

COURT COPY

Me Joey Zukran
LPC AVOCAT INC.

Avocats • Attorneys

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Montreal, Quebec, H4W 2T5

Telephone: (514) 379-1572 • Fax: (514) 221-4441

Email: izukran@lpclex.com

BL 6059

N/D: JZ-178

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Action Collective

17/2/-

Auto + Co 1

Def: Joey Zukran

