

## LONG FORM PRE-APPROVAL NOTICE

### BMW Settlement Program in Quebec

#### NOTICE OF A COURT HEARING ON JUNE 1<sup>ST</sup>, 2021 CONCERNING THE APPROVAL OF A CLASS ACTION SETTLEMENT AGREEMENT IN THE CASE OF *PASAJE v. BMW CANADA INC.*, SUPERIOR COURT OF QUEBEC, DISTRICT OF MONTREAL, NO. 500-06-000915-187

#### PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

#### I. THE SETTLEMENT CLASS

A proposed settlement has been reached with respect to the class action commenced by Zully Liliana Salazar Pasaje (“Applicant”) against BMW Canada Inc. (“BMW”) before the Superior Court of Quebec for the judicial district of Montreal (the “Court”) under docket number 500-06-000915-187 on behalf of the Settlement Class defined in the parties’ Settlement Agreement as:

All natural or legal persons, except for Excluded Persons, who were resident of the Province of Quebec and who owned or leased a BMW Vehicle subject to Recall Campaign No. 2017-470 or Recall Campaign No. 2019-170, and/or Recall Campaign No. 2017-588 or Recall Campaign No. 2019-384, including certain BMW 1 Series (models 2008 to 2012), BMW 3 Series (models 2006 to 2011), BMW 5 Series (models 2006 to 2011), BMW X3 (models 2007 to 2011), BMW X5 (models 2007 to 2010) and BMW Z4 (models 2006 to 2011), on the date of the applicable Recall Campaign(s).

Excluded from the Settlement Class are: (i) BMW, its officers, directors, and employees, its affiliates and affiliates’ officers, directors, and employees, its distributors and distributors’ officers, directors and employees; (ii) BMW Retailers and BMW Retailers’ officers and directors; (iii) persons or entities who have previously executed a release of BMW that includes a claim relating to any applicable Recall Campaign(s); and (iv) all persons or entities who otherwise in the Settlement Class timely and validly opt out of the Settlement Class as described in this notice (“Excluded Persons”).

The Settlement Class is further divided into two Sub-classes: (A) the PCV Blow-by Heater Sub-class and (B) the Blower Regulator Sub-class, as more fully described in this notice.

### **A. PCV Blow-by Heater Sub-class**

Except for Excluded Persons, if you owned or leased a Vehicle that was subject to Recall Campaign No. 2017-470 or Recall Campaign No. 2019-170, and were resident of the Province of Quebec on the date of the applicable Recall Campaign (respectively, September 28, 2017 and April 5, 2019), you are a member of the PCV Blow-by Heater Sub-class. These Vehicles include certain:

- BMW 1 Series (models 2008 to 2011);
- BMW 3 Series (models 2006 to 2011);
- BMW 5 Series (models 2006 to 2011);
- BMW X3 (models 2007 to 2011);
- BMW X5 (models 2007 to 2010); and
- BMW Z4 (models 2006 to 2011).

### **B. Blower Regulator Sub-class**

Except for Excluded Persons, if you owned or leased a Vehicle that was subject to Recall Campaign No. 2017-588 or Recall Campaign No. 2019-384, and were resident of the Province of Quebec on the date of the applicable Recall Campaign (respectively, November 30, 2017 and August 7, 2019), you are a member of the Blower Regulator Sub-class. These Vehicles include certain:

- BMW 3 Series (models 2006 to 2011); and
- BMW 1 Series (models 2008 to 2012).

Except for Excluded Persons, if you owned or leased a BMW 3 Series (models 2006 to 2011) or a BMW 1 Series (models 2008 to 2011), you may be a member of both the PCV Blow-by Heater Sub-class and the Blower Regulator Sub-class.

## **II. SUMMARY**

The Applicant alleges that BMW manufactured and sold certain Vehicles that were subject to a safety defect and misrepresented that they were safe or failed to adequately disclose their defective nature. These Vehicles were the subject of Recall Campaign No. 2017-470 or Recall Campaign No. 2019-170, and/or Recall Campaign No. 2017-588 or Recall Campaign No. 2019-384, which were voluntarily launched by BMW. BMW completely denies any and all wrongdoing or liability. The Applicant and BMW negotiated and ultimately agreed to the proposed Settlement Agreement after counsel for all parties extensively evaluated the facts and law relating to this case, and took into account a variety of factors such as the burdens and expense of the lawsuit, and the risk and uncertainty of litigation.

Members of the Settlement Class who do not opt out may qualify for compensation under the proposed settlement.

Applicant and Class Counsel believe that the settlement is in the best interest of the Settlement Class.

As part of the settlement process, the class action will be authorized by the Court for settlement purposes only.

**This settlement is ultimately subject to the Court's approval. Compensation will only be issued if the Court grants final approval to the settlement and after the time for appeals has ended and any appeals are resolved.**

### **III. WHAT THE SETTLEMENT PROVIDES**

The settlement provides that the Credit and monetary relief identified below will be available to the Settlement Class Members (the "Compensation"). The Compensation will only be given to one owner or lessee per Vehicle as defined in the Settlement Class.

Credits are redeemable for any services, goods and merchandise available at a BMW Retailer in Canada, are freely transferable, are stackable (i.e. multiple Credits can be used together) and shall never expire.

Under the terms of the settlement, certain conditions may lead to Settlement Class Members with valid claims receiving less than the amount claimed. For example, the settlement provides for caps with respect to Out-of-Pocket Expenses and, in compliance with the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c. R-2.1, r. 2, any monetary Compensation paid to Settlement Class Members will be reduced of 2% and an amount totalizing all said reductions shall be remitted to the *Fonds d'aide aux actions collectives*.

#### **1. PCV Blow-by Heater Sub-class**

##### **i. Credits with a cash value of \$40.00**

All members of the PCV Blow-by Heater Sub-class are entitled to receive a Credit with a cash value of \$40.00 as compensation.

##### **ii. Replacement costs of the PCV Blow-by Heater and Out-of-Pocket Expenses (PCV Blow-by Heater Sub-class A)**

The members of the PCV Blow-by Heater Sub-class who have suffered an Adverse Thermal Event and had repairs done to their Vehicle which were not insured or repaired free of charge by BMW or a BMW Retailer will be entitled to claim an amount of \$177.00 representing the replacement costs of the PCV Blow-by Heater as well as an amount covering Out-of-Pocket Expenses, up to a maximum of \$750.00.

An Adverse Thermal Event is any adverse thermal event, including heat generated by a high resistance in the circuit which may cause melting and the potential ignition of

mechanical parts and/or fire, caused by overheating of the PCV Blow-By Heater, as described in Recall Campaign No. 2017-470 or Recall Campaign No. 2019-170, of one of the affected Vehicles, which caused material damage to said Vehicle.

Out-of-Pocket Expenses are out-of-pocket expenses incurred by Settlement Class Members for the uninsured repair costs of a Vehicle damaged by an Adverse Thermal Event.

**iii. Credits with a cash value of \$50.00 (PCV Blow-by Heater Sub-class B)**

The members of the PCV Blow-by Heater Sub-class who had access to inside parking but parked their Vehicle outside as a result of Recall Campaign No. 2017-470 or Recall Campaign No. 2019-170 will be entitled to claim a Credit with a cash value of \$50.00.

**2. Blower Regulator Sub-class**

**i. Credits with a cash value of \$40.00**

All members of the Blower Regulator Sub-class are entitled to receive a Credit with a cash value of \$40.00 as compensation.

**ii. Replacement costs of the Blower Regulator and Out-of-Pocket Expenses (Blower Regulator Sub-class A)**

The members of the Blower Regulator Sub-class who have suffered an Adverse Thermal Event and had repairs done to their Vehicle which were not insured or repaired free of charge by BMW or a BMW Retailer will be entitled to claim an amount of \$141.00 representing the replacement costs of the Blower Regulator as well as an amount covering Out-of-Pocket Expenses, up to a maximum of \$150.00.

An Adverse Thermal Event is any adverse thermal event, including heat generated by a high resistance in the circuit which may cause melting and the potential ignition of mechanical parts and/or fire, caused by overheating of the Blower Regulator, as described in Recall Campaign No. 2017-588 or Recall Campaign No. 2019-384, of one of the affected Vehicles, which caused material damage to said Vehicle.

Out-of-Pocket Expenses are out-of-pocket expenses incurred by Settlement Class Members for the uninsured repair costs of a Vehicle damaged by an Adverse Thermal Event.

**B. Other Payments**

The settlement also provides that BMW will pay the fees, costs and disbursements of Class Counsel that will be approved by the Court, as well as the amount of the individual settlement of the Applicant that will be approved by the Court in exchange for a full and final release with regard to her individual claim.

#### IV. HOW TO QUALIFY FOR COMPENSATION

The Credits with a cash value of \$40.00 will be automatically issued and sent by regular mail to Settlement Class Members within sixty (60) days following the date at which the Approval Judgment becomes final at their last known address of residence as identified from the customer databases maintained by BMW.

In order to qualify to and receive the monetary relief as well as the Credits with a cash value of \$50.00, where applicable, a Settlement Class Member must:

- a) Fully complete a Claims Form (available on the Settlement Website: <https://www.QCpcvregsettlement.ca>) in which he/she/it confirms the facts applicable to his/her/its situation qualifying him/her/it as a member of the sub-class(es) in relation to which Compensation is claimed;
- b) Solemnly declares under penalty of perjury that the information provided therein is true and accurate; and
- c) Submit, within the Claims Period, the fully completed Claims Form along with satisfactory Proof of Eligibility via the Settlement Website.

In the event a Settlement Class Member is entitled (or purports to be entitled) to receive Compensation in relation to more than one Vehicle, the Settlement Class Member must file one Claims Form per Vehicle along with the required Proof of Eligibility within the Claims Period.

Settlement Class Members will be able to submit a claim for Compensation for a period of thirty (30) days. The Claims Period shall begin sixty (60) days after the date at which the Approval Judgment becomes final and shall end ninety (90) days after said date (i.e. the Claims Deadline). Settlement Class Members will have timely filed their Claims Form and Proof of Eligibility so long as they are received by the Claims Administrator on or before the Claims Deadline.

Where applicable, in order to receive any Compensation from the settlement, a Settlement Class Member must have provided valid mailing and email addresses and have a bank account capable of receiving payments via cheques or Interac transfers, as cheques and Interac transfers are the only methods through which monetary compensation will be paid, and as Credits with a cash value of \$50.00 will be sent by email.

## V. SETTLEMENT APPROVAL

An application to approve the settlement will be heard by the Court on June 1<sup>st</sup>, 2021 at 9:30am in room 16.06. The date and time of the Approval Hearing may be subject to adjournment by the Court without further notice to the Class Members other than such notice which will be posted on the Settlement Website and on Class Counsel's website (<https://www.lpclex.com/bmw-recall>).

If the proposed settlement is approved, it will be binding on the Settlement Class except those who timely and validly opt out. Unless you opt out from the settlement, you will lose any right to sue in relation to the Released Claims, as described in the Settlement Agreement. Settlement Class Members who do not opt out will be subject to the releases provided in the Settlement Agreement regardless of whether or not they submit a Claims Form or ultimately receive any Compensation from the settlement.

## VI. OPT-OUTS AND OBJECTIONS

### A. Opt-Outs

If you do not wish to be part of the class action and bound by the Settlement Agreement, you may opt out of the Settlement Class within the Opt-Out Period (i.e. the period of forty-five (45) days following the first communication or publication of the Pre-Approval Notices), which shall end on May 11, 2021, by completing and sending the completed Opt-Out Form (Schedule C to the Settlement Agreement, which is available on the Settlement Website) to the Clerk of the Court by mail at the following address:

Clerk of the Superior Court of Quebec  
Palais de justice  
1, rue Notre-Dame Est  
Montreal (Quebec) H2Y 1B6  
Court file no. 500-06-000915-187 (*Pasaje v. BMW Canada Inc.*)

If you do not timely and properly opt out of the class action within the Opt-Out Period, you will irrevocably be bound by all the terms and conditions of the Settlement Agreement in the event it is approved by the Court. Any attempt to opt out after this time will not be valid.

Settlement Class Members will have timely and properly opted out of the Settlement Class so long as their completed Opt-Out Form is received by the Clerk of the Court before the Opt-Out Period has elapsed.

If you opt out of the class action, you will not be eligible to receive any Compensation from the settlement but you will retain the right to sue on an individual basis in relation to the Released Claims.

## **B. Objections**

So long as you do not opt out, you may object to the settlement by explaining to the Court that you think the proposed settlement terms are not fair or reasonable. Those who object to the settlement will remain part of the Settlement Class and will lose any right to sue in relation to the Released Claims.

If you wish to object to the proposed settlement, you must send a written notice of objection to Class Counsel, either by mail or email at the following address, as the case may be:

Mtre Joey Zukran  
**LPC Avocat Inc.**  
276, rue Saint-Jacques, Suite 801  
Montreal, Quebec, H2Y 1N3  
jzukran@lpclex.com

Your written notice of objection must be received by Class Counsel within the Objection Period (i.e. the period of forty-five (45) days following the first communication or publication of the Pre-Approval Notices), which shall end on May 11, 2021.

Your written notice of objection must include: (a) your name, address, email address, and telephone number; (b) the model, year and VIN of the Vehicle you owned or leased on the date of the applicable Recall Campaign(s); (c) a brief statement of the reasons for your objection along with any supporting evidence; and (d) a confirmation as to whether you plan to attend the hearing in person or through a lawyer, and, if by lawyer, the contact information of your lawyer.

All Settlement Class Members who do not timely and properly object to the Settlement Agreement and give notice of their intention to appear at the Approval Hearing, or who otherwise do not comply with the requirements of this notice, will be barred from seeking any decision or review of this Settlement Agreement either by way of an appeal or otherwise.

Settlement Class Members who do not oppose the proposed settlement need not to appear at the settlement Approval Hearing or take any other action at this time.

## **VII. FURTHER INFORMATION**

A complete copy of the Settlement Agreement, and detailed information on how to obtain or file a Claims Form or an Opt-Out Form are available on the Settlement Website at <https://www.QCpcvregsettlement.ca>.

The law firm representing the Plaintiff and the Settlement Class is the following:

Mtre Joey Zukran  
**LPC Avocat Inc.**  
276, rue Saint-Jacques, Suite 801

Montreal, Quebec, H2Y 1N3  
Phone: +1 514 379 1572  
Fax: +1 514 221 4441  
Email: jzukran@lpclex.com

The law firm representing BMW is the following:

Mtre Sébastien Richemont / Mtre Noah Boudreau / Mtre Peter Pliszka  
**Fasken Martineau DuMoulin LLP**  
Stock Exchange Tower  
800, rue du Square-Victoria, Suite 3700  
Montreal, Quebec, H4Z 1E9  
srichemont@fasken.com / nboudreau@fasken.com / ppliszka@fasken.com

The Claims Administrator is Collectiva Class Actions Services Inc.

**BMW IS NOT RESPONSIBLE FOR THE ADMINISTRATION OF THE SETTLEMENT OR THE DISTRIBUTION THE MONETARY OR CREDIT RELIEF. PLEASE CONTACT CLASS COUNSEL OR THE CLAIMS ADMINISTRATOR - NOT THE COURT OR BMW'S COUNSEL - FOR FURTHER INFORMATION.**

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**This notice has been approved by the Court.**