

In the Circuit Court of Cook County, Illinois
County Department--Chancery Division

DANIELLE K. SMITH,)
)
 Plaintiff,)
)
 v.) No. 02CH7255
)
 VOLKSWAGEN OF AMERICA, INC.,)
)
 Defendant.)

AMENDED AGREEMENT OF SETTLEMENT

THIS AGREEMENT is entered into this 22nd day of January, 2003, by and between Volkswagen of America, Inc., d/b/a Audi of America, Inc. (hereinafter "Audi") and Plaintiff in the above-captioned action (hereinafter the "Litigation"), by and through the undersigned counsel for Audi and Plaintiff's Counsel ("Plaintiff's Counsel").

WHEREAS, Audi is an unincorporated division of Volkswagen of America, Inc., a corporation organized under the laws of the State of New Jersey and is engaged in the business of, among other things, distributing products, including automobiles, parts and accessories, manufactured by or for AUDI AG, a corporation organized and existing under the laws of the Federal Republic of Germany;

WHEREAS, Danielle Smith ("Plaintiff") is the named Plaintiff in the Class Action Complaint in the Litigation, which is now pending in the Circuit Court of Cook County, Illinois

County Department -- Chancery Division (hereinafter "Court"), which was filed on April 11, 2002, as a putative class action on behalf of registered owners and lessees of certain Audi A6 vehicles;

WHEREAS, Plaintiff has alleged in the Complaint that she seeks compensatory damages for economic losses and asserts that the Litigation should proceed as a class action;

WHEREAS, Audi denies the material allegations in the Complaint, denies that any Audi products which are the subject of this lawsuit are defective in any way, denies any wrongdoing of any kind, and further maintains that the Litigation does not satisfy the requirements for a class action and that a class action should not be certified or maintained, except for purposes of settlement;

WHEREAS, the parties, having exchanged relevant information, in response to formal and informal discovery requests, and having conducted independent investigations and analyses of the facts and legal issues, recognize the uncertainties of the outcome in the Litigation, and appreciate the likelihood that any final result would require years of further complex litigation and substantial expense;

WHEREAS, Plaintiff's Counsel have been afforded access to Audi warranty statistics and other relevant documentation, and have been afforded access to relevant design information and

inspection of the physical parts being retrofitted free of charge in vehicles within the Settlement Class pursuant to this Agreement of Settlement and Audi's customer satisfaction program referenced herein;

WHEREAS, Audi acknowledges that the decision to conduct the Customer Satisfaction Program designated "LQ," which is intended to upgrade the front bumper cover assembly alleged to be defective in the Complaint, was reached during a process of analyzing relevant information which was initiated in part in response to the commencement of this action;

WHEREAS, plaintiff's counsel have been fully informed as to the terms and progress of such customer satisfaction program to date;

WHEREAS, Plaintiff's Counsel on behalf of the Settlement Class believe, in light of the costs, risks and delay of continued litigation balanced against the benefits of the settlement to the Settlement Class, that settlement at this time as provided in this Agreement will be in the best interests of the Settlement Class as defined herein;

WHEREAS, Audi and counsel for Plaintiff agree that the settlement provided in this Agreement, which incorporates actions undertaken by Audi as set forth above is a fair, reasonable, and adequate resolution of the Litigation;

WHEREAS, the parties desire to compromise and settle in the Litigation all issues and claims which have been brought, or which could have been brought, by or on behalf of persons who are included in the Settlement Class, except claims arising from personal injury or death;

WHEREAS, the parties desire and intend to seek Court approval of the settlement of the Litigation as set forth in this Agreement and, upon Court approval, the parties intend also to seek a Final Order and Judgment from the Court dismissing the claims of all members of the Settlement Class with prejudice;

NOW, THEREFORE, it is agreed that in consideration of the premises and mutual covenants set forth in this Agreement and the entry by the Court of a Final Order and Judgment dismissing with prejudice the claims asserted in this Litigation by all members of the Settlement Class and approving the terms and conditions of the settlement as set forth in this Agreement, as required by applicable law of the State of Illinois, the Litigation shall be settled and compromised under the terms and conditions contained herein.

1. As used in this Agreement and in the Exhibits annexed hereto, in addition to any definitions elsewhere in this Agreement, the following terms shall have the meanings set forth below:

(a) "Class Vehicle" means a 1998, 1999, 2000 or 2001 Audi A6 distributed and warranted by Audi of America, Inc.;

(b) The "effective date of settlement" shall be the day on which the Final Order and Judgment described in Paragraph 10 below becomes final. For purposes of this Agreement, the Final Order and Judgment shall be deemed to become final on the later of (i) the thirty-first day after it is entered if no notice of appeal is filed or (ii) if any such appeal is filed, on the day following the date on which the Final Order and Judgment is not subject to further judicial review or appeal either by reason of affirmance by a court of last resort or by reason of lapse of time or otherwise, provided that the Final Order and Judgment are not reversed or substantially modified by the Court or an appellate court.

2. In consideration for dismissal of the Litigation with prejudice under the terms of this Agreement, Audi agrees as follows:

(a) Audi will continue to implement the free modification of the front bumper cover assembly in all Class Vehicles and reimbursement of out-of-pocket expenses (e.g., parts, labor, towing, lodging) incurred by any Settlement Class Member as a result of damage to the front bumper cover assembly in a Class Vehicle resulting from the bumper cover becoming caught on a wheel stop obstruction while backing out of a

parking spot, which are included within the customer satisfaction program designated "LQ". Audi reserves the right to offer assistance or consideration additional to that required in this Agreement to any individual owner of a Class Vehicle in its sole discretion in accordance with its usual and customary criteria for the extension of ad hoc customer assistance on an individual goodwill basis. However, its obligations under this Agreement shall be strictly limited by the express terms and conditions of this Agreement.

(b) Audi will submit to Plaintiff's Counsel and file with the Court periodic reports as to the progress of the elements of the "LQ" customer assistance program included within this settlement on or before March 30, 2003 and on or before May 20, 2003, and on a quarterly basis for the next eight (8) quarters thereafter, and shall upon reasonable request and subject to the protective order entered in this action afford Plaintiff's Counsel access to relevant records sufficient to verify Audi's compliance with the terms of the "LQ" customer assistance program included within this settlement. Plaintiff's Counsel shall raise any concerns arising from their review of such records and reports in the first instance with Audi.

(c) Upon the judgment of dismissal contemplated by this Settlement Agreement becoming final and not subject to appeal, Defendant will pay to the named plaintiff the sum of

\$1,000 as compensation for her agreement to serve as class representative plaintiff.

3. This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Agreement nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged by Plaintiff in the Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Audi or any admission by Audi of any claim or allegation made in any action or proceeding against Audi. This Agreement shall not be offered or be admissible in evidence against Audi or cited or referred to in any action or proceeding, except in any action or proceeding brought by or against named Plaintiff, Settlement Class members, or Audi to enforce its terms, or by Audi in defense of any claims brought by Settlement Class members.

4. Subject to Court approval, it is agreed by the parties that the Litigation will be deemed, for the purpose of settlement only, to be certified as a class under 735 ILCS 5/2-801, and the persons or entities defined in Paragraph 5 of this Agreement shall be deemed to constitute the Settlement Class on behalf of which the Litigation is settled. Any certification pursuant to this paragraph shall not constitute, in this or any other proceeding, an admission by Audi or evidence that any

requirement for class certification is otherwise satisfied in the Litigation, except to the extent required under applicable law and Court Rules of the State of Illinois for the certification of a settlement class.

5. The Settlement Class shall be defined as follows:

All persons or entities which owned or leased, at any time on or before January 30, 2003, a 1998, 1999, 2000 or 2001 Audi A6 distributed and warranted by Audi of America, Inc., but excluding (1) defendant, its current employees, officers, and directors, and (2) persons bound by prior fully litigated judgments or who are currently represented by counsel in ongoing litigation against defendant concerning the subject matter of this litigation.

6. No claims for personal injury, wrongful death or damage to property other than Class Vehicles are being compromised or dismissed as a condition or part of the settlement of this Litigation.

7. Plaintiff's Counsel and Audi's Counsel shall present this Agreement to the Court as soon as practicable and shall take all appropriate steps to obtain an Order, substantially in the form attached hereto as Exhibit A,

(a) finding the settlement sufficiently fair, reasonable, and adequate to allow Notice to be disseminated to members of the Settlement Class; (b) certifying the Settlement Class as provided in this Agreement; (c) approving Notice by mail and publication substantially in the forms attached hereto as Exhibit B, and (d) scheduling a hearing on the fairness of the proposed settlement.

8. Audi shall disseminate Notice as directed in that Order (Exhibit A) as follows:

(a) Summary Notice of the proposed settlement (Exhibit B) shall be published once as a Legal Notice in all published Friday editions of USA Today.

(b) The mailing of the Notice under this Agreement (Exhibit C) to the Settlement Class members shall be accomplished by Audi's delivery of copies of the Notice, addressed to all persons identified in databases maintained by or customarily available to and utilized by Audi as current or former owners and lessees of a Class Vehicle, and all persons who Plaintiff's Counsel identify to defense counsel as persons who Plaintiff's Counsel have reason to believe are potential members of the Settlement Class, to the United States Post Office for first class mailing with postage prepaid. Such Notices shall bear the return address of the Post Office Box described in Paragraph 19. Other than reasonable efforts to

ascertain correct addresses of Settlement Class Members as to whom mailed notice is returned as undeliverable and to effect a second mailing to such Settlement Class members, Audi shall have no additional obligation to identify or locate Settlement Class members or mail additional copies of the Notice.

(c) Audi shall have the sole responsibility for giving and paying for the published and mailed Notice provided by Paragraphs 8(a) and (b) and approved in accordance with the order of the Court. Audi shall file an affidavit of mailing and publication certifying that notice has been disseminated in accordance with the terms of this Agreement.

(d) It shall be the responsibility of Plaintiff's Counsel or their designees to respond to all inquiries from Settlement Class members as appropriate, with the exception of correspondence and other communications with Audi pursuant to Paragraph 2 of this Agreement or any subpart thereof.

9. Subject to Court approval, any Settlement Class member who intends to request exclusion from the Settlement Class or to object to the fairness of the proposed settlement (hereinafter "requests for exclusion" and "objections to the settlement") must mail any such request for exclusion to the Post Office Box address set forth in such Notice postmarked within twenty-one (21) days prior to the date of the fairness hearing set forth in paragraph 10 of the Preliminary Approval

Order appended hereto as Exhibit A or must serve any objections to the settlement and the reasons therefor, in writing, including any and all supporting papers, and, if applicable, the objector's statement of intent to appear at the fairness hearing, upon all counsel of record and file the same with the Court no less than twenty-one (21) days prior to the date of the fairness hearing. Persons requesting exclusion and objectors to the settlement must set forth their full name and current address and list the make, model year, and vehicle identification number of their Class Vehicle(s) and shall include proof of ownership or lease of a Class Vehicle on or before January 30, 2003. Any Settlement Class member who does not file timely written objections to the settlement and notice of his or her intent to appear at the fairness hearing pursuant to this paragraph and the Notice shall not be permitted to object to the settlement at the fairness hearing, and shall be foreclosed from seeking review of the settlement by appeal or otherwise.

10. Following final approval by the Court of this Agreement and the settlement contemplated hereby, the parties shall seek entry of an order in the form annexed hereto as Exhibit D, dismissing with prejudice and without further costs the Complaint, any and all other Complaints in the Litigation, and all claims, including, but not limited to, any claims for

damages or equitable relief of any nature, that Settlement Class members made or could have made arising out of or in any way related to the design, manufacture, materials, or defendant's warranty policies and practices relating to the front bumper cover assemblies in Class Vehicles, and dismissing the claims of Settlement Class members who have timely excluded themselves without prejudice, excluding only claims for personal injury, damage to property other than a Class Vehicle or death.

11. Following entry by the Court of the Final Order and Judgment provided for in Paragraph 10 of this Agreement, no act or failure to act by any person shall affect the dismissal of the Litigation, the discharge of Audi, or any other provision of Paragraph 10.

12. If (i) the preliminary or final approval of this Agreement and the settlement described herein is not obtained or is reversed on appeal or (ii) the effective date of settlement as defined herein does not occur for any reason or (iii) entry of the Final Order and Judgment described in Paragraph 10 is finally reversed or (iv) the judgment is substantially modified by the Court, or on appeal, and either Plaintiff's Counsel or Audi so elects, this Agreement shall be null and void, shall have no further force and effect with respect to any party in the Litigation, and shall not be offered in evidence or used in the Litigation for any purpose, including the existence,

certification, or maintenance of any purported class. In such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith, other than representations of fact made to or filed with the Court or testimony or statements made under oath or under penalty of perjury, shall be without prejudice to Audi and Plaintiff, shall not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Litigation shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court (except that expenses paid by Audi for the preparation and dissemination of notice in connection with this Settlement Agreement shall remain the sole responsibility of Audi and shall not be taxable as costs), and any and all orders entered by the Court pursuant to the provisions of this Agreement shall be deemed vacated and shall have no force or effect whatsoever. Plaintiff expressly reserves the right to seek certification of the class alleged in the Complaint, and Audi reserves all rights to oppose certification of any class.

13. Plaintiff's Counsel and counsel for Audi shall use their best efforts, within ten (10) days after the date of execution of this Agreement, to obtain Court authorization to disseminate Notice of this Agreement. Audi shall use its best

efforts to have the Class Notice pursuant to Paragraph 8(b) mailed and published within forty-five (45) days after authorization to disseminate notice is obtained. Plaintiff's Counsel and counsel for Audi shall use their best efforts to seek a hearing to obtain final approval of the settlement to be held within Seventy-five (75) days following publication of the Notice.

14. If, in the view of Audi, an excessive number of Settlement Class members, but in no event less than 5% of the Settlement Class, have elected to be excluded from the Settlement Class, Audi may elect to withdraw from the settlement, upon written notice to Plaintiff's Counsel not later than ten (10) days prior to the date of the fairness hearing herein.

15. Costs and Attorney Fees

(a) Plaintiff's Counsel shall apply to the Court for an award of reasonable attorneys' fees incurred to and through the date on which the Court grants final approval of the settlement, plus filing fees and reasonable costs of suit including attorney's fees and costs for reasonable efforts to monitor Audi's compliance with the Settlement at any time, in an amount not to exceed \$85,000.00. As an additional benefit to the Settlement Class, upon such award becoming final and no longer subject to appeal, Audi will pay such an award, up to

said amount, and shall in no event be liable to plaintiff for, and plaintiff shall make no effort to claim or to collect or enforce, any judgment or order for reasonable attorneys' fees incurred to and through the date on which the Court grants final approval of the settlement the Settlement Class, plus filing fees and reasonable costs of suit including attorney's fees and costs for reasonable efforts to monitor Audi's compliance with the Settlement at any time, in an amount greater than \$85,000.00.

(b) The Court shall retain continuing jurisdiction to enforce compliance with this Agreement; provided, that the parties will confer in good faith concerning any perceived violation before presenting any claim of violation to the Court.

16. The parties and their attorneys agree to seek Court approval of this Agreement and to use their best efforts to effect the consummation and implementation of the settlement contemplated hereunder.

17. Upon the effective date of settlement, conditioned upon its continuing performance of all terms and conditions of this Agreement and the Final Order and Judgment, Volkswagen of America, Inc., AUDI AG, a corporation organized and existing under the law of the Federal Republic of Germany, Volkswagen AG, a corporation organized and existing under the law of the Federal Republic of Germany, their present or former

officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions (including but not limited to "Audi" as herein defined) predecessors, subrogees and authorized dealers shall forever be released and discharged from any and all claims, including, but not limited to, any claims for damages or equitable relief of any nature, that Settlement Class members made or could have made arising out of or in any way related to the design, manufacture, materials, or defendant's warranty policies and practices relating to the front bumper cover assemblies in Class Vehicles (except as to such a member who has filed a proper and timely request for exclusion from the Settlement Class), excluding only claims for personal injury, damage to property other than a Class Vehicle or death.

18. This Agreement and the release and discharge contemplated thereunder of Volkswagen of America, Inc., AUDI AG, a corporation organized and existing under the law of the Federal Republic of Germany, Volkswagen AG, a corporation organized and existing under the law of the Federal Republic of Germany, their present or former officers, directors, employees, agents, heirs, executors, administrators, successors, reorganized successors, assigns, subsidiaries, affiliates, parents, divisions (including but not limited to "Audi" as

herein defined), predecessors, and authorized dealers set forth in the preceding paragraph extends to all claims, including, but not limited to, any claims for compensatory and exemplary or punitive damages or equitable relief of any nature, that Settlement Class members made or could have made arising out of or in any way related to the design, manufacture, materials, or defendant's warranty policies and practices relating to the front bumper cover assemblies in Class Vehicles, other than claims for personal injury, death, or damage to property other than a Class Vehicle.

19. Defendant's Counsel shall be responsible for obtaining a United States Post Office Box, for the purpose of receiving requests for exclusion that are submitted in accordance with Exhibits B and C to this Agreement. Defendant's Counsel shall also be responsible for promptly giving notice of the receipt of any such requests for exclusion by providing complete copies to counsel for Plaintiff, if requested.

20. This Agreement and its attachments shall constitute the entire Agreement of the parties and shall not be subject to any change, modification, amendment, or addition without the express written consent of counsel on behalf of all parties to this Agreement.

21. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors, and assigns.

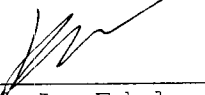
22. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Audi and Plaintiff's Counsel, on behalf of the parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

23. The Court shall retain continuing and exclusive jurisdiction over the parties hereto, including all members of the Settlement Class, and over the administration and enforcement of the settlement and the benefits to the Settlement Class hereunder. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of the settlement must be made by motion to the Court.

24. This Agreement may be executed in counterpart by the parties hereto, and a facsimile signature shall be deemed an original signature for purposes of this Agreement.

25. This Agreement shall be construed under and governed by the laws of the State of Illinois.

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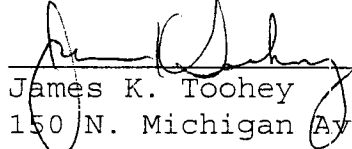
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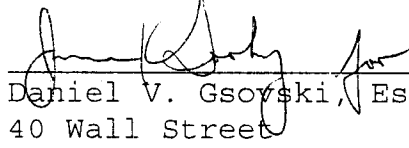
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