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## **Mercedes Emissions Claim Client Update August 21<sup>st</sup> 2020**



As you are aware, Leigh Day are the joint lead solicitors in the VW emissions litigation. After a lengthy preliminary issues trial, the claimants in that action were successful in establishing that the Court of England and Wales was bound by the German Transport Authority (KBA) decisions and finding that Volkswagen group cars with EA189 engines contained prohibited emissions test cheating software and even if the Court had concluded otherwise, it found that the software in these cars constituted a defeat device. The High Court denied Volkswagen permission to appeal to the Court of Appeal. Volkswagen, therefore, applied directly to the Court of Appeal for leave. That application was rejected by Court of Appeal on 6th August.

This is a significant step in the VW litigation and for future emissions claims, as it sets a precedent as regards the binding nature of the decisions of the KBA. In June 2018 the KBA issued a mandatory recall of Daimler vehicles manufactured between August 2011 and September 2018, which the KBA concluded were fitted with prohibited defeat device software. That decision is being appealed by Mercedes.

In further news, on Thursday 13th August, Daimler announced that it was entering settlement agreements in respect of the US Regulatory and Class Action lawsuits. As part of the US settlement, Daimler has set aside \$1.5 billion dollars for the settlement with the US authorities, and \$700 million for the US class-action lawsuit. The settlements are subject to the final approval of the relevant authorities and courts.

Daimler said it was entering settlement agreements: "after weighing all aspects [for what's] in the best interest of the company," adding "with the proposed settlements, the company takes an important step towards legal certainty with respect to various diesel proceedings in the United States."

Leigh Day has now been approached by over 25,000 Mercedes owners who, like the claimants in the VW litigation, are angry that they have been duped by the car manufacturer that marketed these vehicles as having the cleanest and best emissions technology. Although Daimler argues that its emissions technology complied with the rules and that its case was different from Volkswagen, the Volkswagen litigation has already established "legal certainty" in England and Wales with respect to the binding nature of the KBA decisions. However, we expect that Daimler will be vigorously defending the claims here.

The Volkswagen litigation has cost Volkswagen an estimated \$33.6 billion dollars; we are hopeful that Daimler will take a more pragmatic approach.

We will now be preparing formal letters of claim on behalf of those clients who have formally instructed us and have provided us with sufficient information. We will be in touch shortly if we require further information from you.

