

Report from Braunschweig

30 September 2019

The model case lawsuit began today with a hearing at the Braunschweig Higher Regional Court.

“The Braunschweig Higher Regional Court has sent a quite positive signal to the consumers who have signed up to this lawsuit,” said Klaus Müller, Executive Director of the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V. – vzbv). “vzbv wants the court to find that Volkswagen has deliberately and unethically caused harm to its customers. We believe VW owes redress for that. Today, the court indicated that these claims have to be considered very seriously.”

The Braunschweig court deems the model case lawsuit brought by vzbv to be admissible in principle. At the beginning of the proceedings, the court looked in detail at the current case law of numerous higher regional courts and of the Federal Court of Justice (Bundesgerichtshof; BGH). The court also set out its preliminary assessment of the merits of the claim. Where VW had not sold cars directly to consumers the court did not consider a breach of contractual duties. However, the court would examine very seriously the claims that VW had deliberately and unethically caused harm.

It said it would also look at whether any harm had in fact been suffered. In doing so, it would take account of the indicative ruling of the BGH in January 2019. This stated that the risk of suffering detriment was sufficient to satisfy the test of harm, and that no actual, specific detriment had to have been suffered. The Braunschweig Higher Regional Court went on to indicate that it would also examine very carefully and thoroughly the question of a deduction for use.

The court called upon the parties to consider the possibility of a settlement. Therefore, the number of consumers who had actually signed up to the model case proceeding should be determined and made available to the parties as quickly as possible. The claims register is open at the Federal Office for Justice (Bundesamt für Justiz; BfJ) until 30 September 2019 to allow claimants to remove their names.

vzbv has always stressed that, in the interests of a speedy resolution, a good settlement would be an extremely desirable outcome of the case.

The court acknowledged that many consumers are awaiting the outcome of the model case action with great expectation.

At the end of the hearing, vzbv submitted the demands for relief in essentially the same form as [published at the Federal Office of Justice on 18 September 2019](#). There were some minor adjustments to the wording, but the content remained the same.

The second hearing will take place on 18 November 2019.

30 September 2019 is the final date on which consumers can withdraw their claim from the claims register. The form required for this is available on the BfJ website [here](#).