



Judgment Summary
Supreme Court
New South Wales

Dwyer v Volkswagen Group Australia Pty Ltd t/as Volkswagen Australia [2021]
NSWSC 715

Stevenson J

The Supreme Court has held that a plaintiff in representative proceedings had failed to establish that his Volkswagen vehicle was not of acceptable quality for the purposes of s 54 of the Australian Consumer Law by reason of being fitted with a driver side Takata airbag, nor that he had suffered any damage by reason of any want of acceptable quality in his vehicle.

The plaintiff contended that because the Takata airbag used a propellant known as Phase Stabilised Ammonium Nitrate (“PSAN”) and because PSAN was known to have a propensity to degrade when exposed to temperature fluctuations and moisture, his car was not of acceptable quality because by reason of the use of PSAN as a propellant the Takata airbag as installed in his car had a propensity to explode or mis-deploy.

The Court found that the plaintiff had not established any link between the propensity of PSAN to degrade, and any relevant functionally significant propensity of the PSAN to degrade in the airbag installed in his vehicle so as to cause it to explode or mis-deploy.

The plaintiff purchased his vehicle in 2013 and has driven it without incident since then. In 2019 the defendant, Volkswagen Australia, replaced the Takata airbag in the plaintiff’s vehicle with a different airbag in the course of the vehicle’s 60,000 km service and without cost to the plaintiff.

The Court found that in these circumstances the plaintiff had not shown that he had suffered any loss by reason of any reduction in value of this vehicle at its time of purchase caused by the installation of the Takata airbag.

The Court found that in any event the plaintiff had not proved any such reduction in value.