

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No : 500-06-000723-144

DATE : October 2, 2019

BY THE HONOURABLE SUZANNE COURCHESNE, J.S.C.

ELENI VITORATOS

and

ANDREA FREY

Petitioners

v.

TAKATA CORPORATION

and

TK HOLDINGS, INC.

and

HIGHLAND INDUSTRIES, INC.

and

HONDA CANADA INC.

and

HONDA MOTOR CO., LTD.

and

TOYOTA CANADA INC.

and

TOYOTA MOTOR CORPORATION

and

**TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA, INC.**

and

SUBARU CANADA INC.

and

FUJI HEAVY INDUSTRIES, LTD.

and
BMW CANADA INC./BMW GROUP CANADA
and
BMW OF NORTH AMERICAN, LLC
and
BMW MANUFACTURING CO. LLC
and
BMW AG
and
NISSAN CANADA INC.
and
NISSAN NORTH AMERICA INC.
and
NISSAN MOTOR CO. LTD.
and
MAZDA CANADA INC.
and
MAZDA MOTOR CORPORATION
and
FORD MOTOR COMPANY OF CANADA LIMITED
and
FORD MOTOR COMPANY
and
GENERAL MOTORS OF CANADA LIMITED
and
GENERAL MOTORS CORPORATION
and
FCA CANADA INC.
and
FCA US LLC
and
DAIMLER AG
and
MITSUBISHI MOTOR SALES OF CANADA, INC.
and
MITSUBISHI MOTORS NORTH AMERICA, INC.
and
MITSUBISHI MOTORAS CORPORATION
and
VOLKSWAGEN GROUP CANADA INC.
and
AUDI CANADA INC.
and
MERCEDES-BENZ CANADA INC.

Respondents

JUDGMENT

[1] **CONSIDERING** Petitioners' Fourth Amended Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative dated June 28, 2017 ("the Motion to authorize") on behalf of the following class:

- all persons, entities or organizations resident in Canada who purchased and/or leased one or more of the Defective Vehicles that contain(s) airbags manufactured by Takata, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the Defective Vehicles that contain(s) airbags manufactured by Takata, or any other group to be determined by the Court;

[2] **CONSIDERING** the Petitioners' application for authorization of a class action for the purposes of settlement as against Respondents Honda Motor Co., Ltd. and Honda Canada Inc., (the "Settling Respondents") and for approval of the notices of authorization and settlement approval hearing (the "Class Notices") and for approval of the method of dissemination of the Class Notices (the "Notice Plan");

[3] **CONSIDERING** the material filed in the Court record, including the Honda Settlement Agreement dated January 14, 2019 and amended on May 3, 2019 (the "Settlement Agreement"), between Petitioners and the Settling Respondents as well as Honda of America Manufacturing, Inc. and American Honda Motor Co., Inc. which was agreed to, subject to its approval by the court and without any admission of liability whatsoever and for the sole purpose of resolving the dispute between these Parties;

[4] **CONSIDERING** articles 574, 575, 576, 579, 580, 581, 590 & 591 of the *Code of Civil Procedure*;

[5] **CONSIDERING** that the Settling Respondents consent to the Petitioners' application for authorization of a class action for the purposes of settlement;

[6] **CONSIDERING** that the Parties entered into the Settlement Agreement to fully and finally settle all economic loss claims asserted against the Settling Respondents in or related to the present Class Action;

[7] **CONSIDERING** that the Petitioners ask that this Court authorize the bringing of a class action for the purpose of settlement only and as against the Settling Respondents

only and appoint them as representative plaintiffs of the Quebec settlement class members;

[8] **CONSIDERING** that the Settling Respondents are consenting to the authorization of the present case as a class proceeding for the purposes of settlement only, which consent shall be withdrawn should the Settlement Agreement not be approved by the Court;

[9] **CONSIDERING** that despite this consent, the analysis of the criteria set forth at article 575 C.C.P. must still be met;

[10] **CONSIDERING** that, under reserve of the rights of the Settling Respondents and the Non-Settling Respondents, the Motion to authorize and the Exhibits in support thereof provide reasons to grant the present Application;

[11] **CONSIDERING** that the Petitioners and the Settling Respondents have agreed to seek authorization for the following identical, similar or related issue of law or fact, namely:

“Whether some or all of the Subject Vehicles contain a Takata PSAN Inflator that is the subject of a Recall.”

[12] **CONSIDERING** that the facts alleged in the Motion to authorize and the Exhibits in support thereof appear to justify the conclusions sought;

[13] **CONSIDERING** that the composition of the settlement classes makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others for consolidation of proceedings because:

- a) Potential settlement class members, of which there are many hundreds of thousands, are dispersed across Quebec;
- b) Given the costs and risks inherent in instituting an action before the Courts, people could hesitate to institute individual actions against the Settling Respondents;
- c) Individual litigation of the factual and legal issues raised would increase delay and expenses to all parties and would place an unjustifiable burden on the judicial system.

[14] **CONSIDERING** that the Court is satisfied, in light of the affidavits of the Petitioners signed on September 10, 2019, that they both are in a position to adequately represent the Quebec settlement class members and to protect their interests as representative plaintiffs;

[15] **CONSIDERING** that the proposed Class Notices and the Notice Plan respect the conditions set forth in articles 579, 580, 581, 590 and 591 of the *Code of Civil Procedure*;

POUR CES MOTIFS, LE TRIBUNAL : **WHEREFORE, THE COURT:**

[16] **ACCORDE** la présente demande ; **GRANTS** the present application;

[17] **ORDONNE** que, pour l'application du présent jugement, sauf dans la mesure où elles sont modifiées par le présent jugement, les définitions énoncées dans le Convention de règlement, pièce R-1, s'appliquent et y sont incorporées par renvoi ; **ORDERS** that for the purposes of this judgment, except to the extent that they are modified by this judgment, the definitions contained in the Settlement Agreement, Exhibit R-1, shall apply and are incorporated by reference;

[18] **AUTORISE** l'exercice de cette action collective au Québec contre HONDA CANADA INC. et HONDA MOTOR CO., LTD. aux seules fins d'un règlement hors cour et sous réserve des conditions de la Convention de règlement; **AUTHORIZES** the bringing of a class action in Quebec against HONDA CANADA INC. and HONDA MOTOR CO., LTD for the purposes of settlement only, subject to the terms of the Settlement Agreement;

[19] **ATTRIBUE** aux Eleni Vitoratos et Andrea Frey le statut de représentantes du groupe ci-après décrit : **APPOINTS** Eleni Vitoratos and Andrea Frey as representatives of the class herein described as:

Groupe de règlement au Québec

Quebec Settlement Class

«Toutes les personnes résidant au Québec, y compris les recycleurs de véhicules automobiles qui : (a) étaient propriétaires ou locataires d'un Véhicule concerné à la date d'approbation finale ; ou (b) étaient antérieurement propriétaires ou locataires d'un Véhicule concerné, mais après avoir été avisés du rappel et avant la date d'approbation finale, ont cessé de l'être ;»

"all persons resident in Quebec, including Automotive Recyclers, who: (a) owned or leased a Subject Vehicle on the Final Approval Date; or (b) formerly owned or leased a Subject Vehicle, but after being notified of a Recall and before the Final Approval Date, ceased to do so;"

[20] **IDENTIFIE** aux fins de règlement, la question commune comme étant la suivante : **IDENTIFIES** for the purposes of settlement, the common issue as follows:

«Si certains ou tous les Véhicules en

"Whether some or all of the Subject Vehicles contain a Takata PSAN Inflator

cause contiennent un gonfleur Takata PSAN faisant l'objet d'un Rappel ;» that is the subject of a Recall;»

[21] **ORDONNE** que l'Audience d'approbation du Règlement au Québec soit tenue le 30 mars 2020, à 9h en salle 2.08 [ou toute autre salle d'audience, qui sera indiquée par avis affiché à l'extérieur de la salle d'audience 2.08] au Palais de justice de Montréal, 1, rue Notre-Dame Est (l'« Audience d'approbation du Règlement du Québec »), où cette Cour devra alors décider :

ORDERS that the Settlement Approval Hearing in Québec is to be held on March 30, 2020 at 9am, in room 2.08 [or any other courtroom, which will be indicated by the posting of a sign outside of courtroom 2.08] at the Montreal Courthouse, 1, Notre-Dame Street East (the "Quebec Settlement Approval Hearing"), at which time this Court will be asked to decide:

- | | |
|--|--|
| <p>a) s'il convient d'approuver la Convention de règlement comme étant juste, raisonnable et dans le meilleur intérêt des membres du groupe du Québec ;</p> <p>b) si la requête des Avocats du Groupe du Québec relativement aux frais, débours et taxes applicables devrait être accordée ; et</p> <p>c) tout autre sujet que la Cour jugera appropriée ;</p> | <p>a) whether to approve the Settlement Agreement as fair, reasonable and in the best interest of the Quebec Class Members ;</p> <p>b) whether Quebec Class Counsel's application for fees, disbursements and applicable taxes should be granted ; and</p> <p>c) any other matters as the Court may deem appropriate ;</p> |
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[22] **DÉCLARE** que la Convention de règlement, dans son intégralité (incluant son préambule et ses annexes et son amendement), fait partie intégrale du présent jugement ;

DECLARES that the Settlement Agreement, in its entirety (including its Preambles, Schedules, and amendment), are an integral part of this judgment;

[23] **APPROUVE** la forme et le contenu des Avis au groupe essentiellement conformes aux avis communiqués comme pièces R-3 et R-4 ci-annexées ;

APPROVES the form and content of the Class Notices substantially in the form as attached hereto as Exhibits R-3 and R-4;

[24] **ORDONNE** que les Avis au groupe soient publiés et diffusés essentiellement en conformité avec le Plan de diffusion communiqué comme pièce R-5 ci-annexée ;

ORDERS that the Class Notices shall be published and disseminated substantially in accordance with the Notice Plan as attached hereto as Exhibit R-5;

[25] **ORDONNE** que la date et l'heure pour la tenue de l'Audience d'Approbation

ORDERS that the date and time of the Quebec Settlement Approval Hearing shall

du Règlement du Québec soient indiquées dans l'Avis au groupe, bien qu'elles puissent être reportées par la Cour sans autre avis signifié aux Membres du groupe du règlement, exception faite de l'avis qui sera affiché sur le site web du Règlement ;

be set forth in the Class Notice, but may be subject to adjournment by the Court without further publication notice to the Settlement Class Members, other than such notice which will be posted on the Settlement Website;

[26] **DÉTERMINE** que la date limite d'exclusion est fixée pour la date qui tombe 60 jours après la Date de l'Avis ;

DETERMINES that the Opt Out Deadline is hereby set for the date that is 60 days after the Notice Date;

[27] **ORDONNE** que tous les Membres du groupe du Québec qui ne s'excluent pas valablement de cette action avant la date limite d'exclusion soient liés par les termes de la Convention de règlement, sous réserve de l'approbation de cette Cour, et qu'ils ne puissent pas s'exclure à l'avenir ;

ORDERS that all Quebec Class Members who do not validly Opt Out of this proceeding by the Opt Out Deadline shall be bound by the terms of the Settlement Agreement, if approved by this Court, and may not opt out of the action in the future;

[28] **ORDONNE** que tout Membre du groupe du Québec qui choisit de s'exclure de la présente action collective conformément aux dispositions du présent jugement ne puisse pas également s'opposer à la Convention de règlement ni faire de commentaires à son sujet et que toute objection ou tout commentaire reçu sera réputé retiré;

ORDERS that any Quebec Class Member who elects to opt out of this class action in accordance with the provisions of this judgment may not also object to or comment on the Settlement Agreement and any such objection or comments received therefrom shall be deemed withdrawn;

[29] **ORDONNE** que tout Membre du groupe du Québec qui s'exclut de la présente action conformément aux dispositions du présent jugement ne soit pas lié par la Convention de règlement, ne soit pas en droit de recevoir les prestations payables dans le cadre de ces règlements, cesse d'être un membre putatif du groupe dans la présente action et tout délai de prescription par ailleurs applicable à ce membre du groupe sera réputé recommencer à courir à compter de la date limite d'exclusion ;

ORDERS that any Quebec Class Member who opts out of this class action in accordance with the provisions of this Order Agreement, shall not be entitled to receive any benefits or compensation in connection with the Settlement Agreement, shall cease to be a putative class member in this action and any limitation periods otherwise applicable to said class member shall be deemed to re-commence running as of the Opt Out Deadline;

[30] **DÉCLARE** que si la Convention de règlement n'est pas approuvée, si elle est

DECLARES that if the Settlement Agreement is not approved, is terminated in

résiliée conformément à ses termes ou si elle échoue autrement pour une raison quelconque, le présent jugement, y compris l'autorisation aux fins de règlement et tous les formulaires d'exclusion remis en vertu du présent jugement, doivent être déclarés nuls et sans effet;

accordance with its terms or otherwise fails to take effect for any reason, this judgment, including authorization for settlement purposes and all Opt Out Forms delivered pursuant to this judgment, shall be declared null and of no effect;

[31] **ORDONNE** que toute partie concernée par ce jugement puisse demander à la Cour de nouvelles directives ;

ORDERS that any party affected by this judgment may apply to the Court for further directions;

[32] **DÉCLARE** qu'en cas de conflit entre le présent jugement et les termes de la Convention de règlement, ce jugement prévaudra ;

DECLARES that in the event of a conflict between this judgment and the terms of the Settlement Agreement, this judgment shall prevail;

[33] **LE TOUT**, sans frais de justice.

THE WHOLE, without legal costs.



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