

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000723-144

(Class Action)  
SUPERIOR COURT

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**E. VITORATOS**

*Petitioner*

-vs.-

**TAKATA CORPORATION**, legal person duly constituted having its head office at ARK Hills South Tower, 4-5 Roppongi 1-Chome, Minato-ku, Tokyo, 106-8488, Japan

and

**TK HOLDINGS, INC.**, legal person duly constituted having its head office at 2500 Takata Drive, City of Auburn Hills, State of Michigan, 48326, U.S.A.

and

**HIGHLAND INDUSTRIES, INC.**, legal person duly constituted having its head office at 1350 Bridgeport Drive, Suite 1, City of Kernersville, State of North Carolina, 27284, U.S.A.

and

**HONDA CANADA INC.**, legal person duly constituted, having its principal place of business at 180 Honda Boulevard, City of Markham, Province of Ontario, L6C 0H9

and

**HONDA MOTOR CO., LTD.**, legal person duly constituted, having its principal place of business at 1-1 Minami Aoyama, 2 Chome, Minato-Ku, Tokyo, 107-8556, Japan

and

**TOYOTA CANADA INC.**, legal person duly constituted having its head office at One

Toyota Place, City of Scarborough, Province of Ontario, M1H 1H9

and

**TOYOTA MOTOR CORPORATION**, legal person duly constituted having its head office at 1 Toyota-Cho, Toyota City, Aichi Prefecture, 471-8571, Japan

and

**TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.**, legal person duly constituted having its head office at 25 Atlantic Avenue, City of Erlanger, State of Kentucky, 41018, U.S.A.

and

**SUBARU CANADA, INC.**, legal person duly constituted having its head office at 560 Suffolk Court, City of Mississauga, Province of Ontario, L5R 4J7

and

**FUJI HEAVY INDUSTRIES, LTD.**, legal person duly constituted having its head office at Ebisu Subaru Building, 1-20-8, Ebisu, Shibuya-ku, Tokyo, 150-8554, Japan

and

**BMW CANADA INC. / BMW GROUP CANADA**, legal person duly constituted having its head office at 50 Ultimate Drive, City of Richmond Hill, Province of Ontario, L4S 0C8

and

**BMW OF NORTH AMERICA, LLC**, legal person duly constituted having its head office at 300 Chestnut Ridge Rd, City of Woodcliff Lake, State of New Jersey, 07677, U.S.A.

and

**BMW MANUFACTURING CO., LLC**, legal person duly constituted having its head office at 1400 Highway 101 South, City of Greer, State of South Carolina, 29651, U.S.A.

and

**BMW AG**, legal person duly constituted having its head office at Petuelring 130, City of Munich, 80788, Germany

and

**NISSAN CANADA INC.**, legal person duly constituted having its head office at 5290 Orbitor Drive, P.O. Box 1709, City of Mississauga, Province of Ontario, L4W 4Z5

and

**NISSAN NORTH AMERICA, INC.**, legal person duly constituted having its head office at One Nissan Way, City of Franklin, State of Tennessee, 37067, U.S.A.

and

**NISSAN MOTOR CO., LTD.**, legal person duly constituted having its head office at 1-1, Takashima 1-chome, Nishi-ku, Yokohama-shi, Kanagawa 220-8686, Japan

and

**MAZDA CANADA INC.**, legal person duly constituted having its head office at 55 Vogell Road, City of Richmond hill, Province of Ontario, L4B 3K5

and

**MAZDA MOTOR CORPORATION**, legal person duly constituted having its head office

at 3-1 Shinchi, Fuchu-cho, Aki-gun,  
Hiroshima, 730-8670, Japan

and

**FORD MOTOR COMPANY OF CANADA,  
LIMITED**, legal person duly constituted  
having its head office at 1 The Canadian  
Road, City of Oakville, Province of Ontario,  
L6J 5E4

and

**FORD MOTOR COMPANY**, legal person  
duly constituted having its head office at 1  
The American Road, City of Dearborn, State  
of Michigan, 48121, U.S.A.

and

**GENERAL MOTORS OF CANADA  
LIMITED**, legal person duly constituted  
having its head office at 5000 Felix-Leclerc  
Autoroute, City of Pointe-Claire, Province of  
Quebec, H9R 1B6

and

**GENERAL MOTORS CORPORATION**, legal  
person duly constituted having its head office  
at 300, Renaissance Center, City of Detroit,  
State of Michigan, 48265-3000, U.S.A.

and

**CHRYSLER CANADA INC.**, legal person  
duly constituted having its head office at One,  
Riverside Drive, City of Windsor, Province of  
Ontario, N9A 5K3

and

**CHRYSLER GROUP LLC**, legal person duly  
constituted having its head office at Chrysler

Drive, City of Auburn Hills, State of Michigan,  
48326, U.S.A.

and

**MITSUBISHI CANADA LIMITED**, legal  
person duly constituted having its head office  
at 666, Burrard Street, Suite 2800, City of  
Vancouver, Province of British-Columbia,  
V6C 2Z7

and

**MITSUBISHI INTERNATIONAL  
CORPORATION**, legal person duly  
constituted having its head office at 520,  
Madison Avenue, City of New York, State of  
New York, 10022-4223, U.S.A.

*Respondents*

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**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
&  
TO ASCRIBE THE STATUS OF REPRESENTATIVE  
(Art. 1002 C.C.P. and following)**

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING  
IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS  
FOLLOWS:

**I. GENERAL PRESENTATION**

**A) The Action**

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:
  - 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. “Defective Vehicles” means all vehicles purchased or leased in Canada that contain airbags manufactured by the Takata Respondents and that have been subject to an airbag-related warning or recall by the United States National Highway Traffic Safety Administration (hereinafter the “NHTSA”), including those that may be recalled after the filing of this Motion, and includes, but is not limited to, the following vehicles at present:

<ul style="list-style-type: none"> <li>• <u>Honda Vehicles</u> <ul style="list-style-type: none"> <li>• 2003 to 2006 Acura MDX,</li> <li>• 2002 to 2003 Acura TL/CL,</li> <li>• 2005 Acura RL,</li> <li>• 2001 to 2007 Honda Accord,</li> <li>• 2001 to 2005 Honda Civic,</li> <li>• 2002 to 2006 Honda CR-V,</li> <li>• 2003 to 2011 Honda Element,</li> <li>• 2002 to 2004 Honda Odyssey,</li> <li>• 2003 to 2007 Honda Pilot,</li> <li>• 2006 Honda Ridgeline,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <u>Nissan Vehicles</u> <ul style="list-style-type: none"> <li>• 2001 to 2003 Nissan Maxima,</li> <li>• 2001 to 2004 Nissan Pathfinder,</li> <li>• 2002 to 2004 Nissan Sentra,</li> <li>• 2001 to 2004 Infiniti I30/I35;</li> <li>• 2002 to 2003 Infiniti QX4,</li> <li>• 2003 to 2005 Infiniti FX35/FX45,</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <u>Toyota Vehicles</u> <ul style="list-style-type: none"> <li>• 2002 to 2005 Lexus SC,</li> <li>• 2002 to 2005 Toyota Corolla,</li> <li>• 2003 to 2005 Toyota Matrix,</li> <li>• 2002 to 2005 Toyota Sequoia,</li> <li>• 2003 to 2005 Toyota Tundra,</li> <li>• 2003 to 2005 Pontiac Vibe,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <u>Mazda Vehicles</u> <ul style="list-style-type: none"> <li>• 2003 to 2007 Mazda6,</li> <li>• 2006 to 2007 MazdaSpeed6,</li> <li>• 2004 to 2008 Mazda RX-8,</li> <li>• 2004 to 2005 MPV,</li> <li>• 2004 to B-Series Truck,</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <u>Subaru Vehicles</u> <ul style="list-style-type: none"> <li>• 2003 to 2005 Baja,</li> <li>• 2003 to 2005 Legacy,</li> <li>• 2003 to 2005 Outback,</li> <li>• 2004 to 2005 Impreza,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <u>Chrysler Vehicles</u> <ul style="list-style-type: none"> <li>• 2003 to 2008 Dodge Ram 1500,</li> <li>• 2005 to 2008 Dodge Ram 2500,</li> <li>• 2006 to 2008 Dodge Ram 3500,</li> <li>• 2006 to 2008 Dodge Ram 4500,</li> <li>• 2008 to Dodge Ram 5500,</li> <li>• 2005 to 2008 Dodge Durango,</li> <li>• 2005 to 2008 Dodge Dakota,</li> <li>• 2005 to 2008 Chrysler 300,</li> <li>• 2007 to 2008 Chrysler Aspen,</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <u>Ford Vehicles</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>General Motors Vehicles</u></li> </ul>



<ul style="list-style-type: none"> <li>• 2004 Ranger,</li> <li>• 2005 to 2006 GT,</li> <li>• 2005 to 2007 Mustang,</li> </ul>	<ul style="list-style-type: none"> <li>• 2002 to 2003 Buick LeSabre,</li> <li>• 2002 to 2003 Buick Rendezvous,</li> <li>• 2002 to 2003 Cadillac DeVille,</li> <li>• 2002 to 2003 Chevrolet Trailblazer,</li> <li>• 2002 to 2003 Chevrolet Impala,</li> <li>• 2002 to 2003 Chevrolet Monte Carlo,</li> <li>• 2002 to 2003 Chevrolet Venture,</li> <li>• 2002 to 2003 GMC Envoy and XL,</li> <li>• 2002 to 2003 Oldsmobile Aurora,</li> <li>• 2002 to 2003 Oldsmobile Bravada,</li> <li>• 2002 to 2003 Oldsmobile Silhouette,</li> <li>• 2002 to 2003 Pontiac Bonneville,</li> <li>• 2002 to 2003 Pontiac Montana,</li> <li>• 2003 to 2005 Pontiac Vibe,</li> <li>• 2005 Saab 9-2X,</li> <li>• 2008 to 2013 GMC Acadia,</li> </ul>
<ul style="list-style-type: none"> <li>• <u>BMW Vehicles</u> <ul style="list-style-type: none"> <li>• 2000 to 2005 3 Series Sedan,</li> <li>• 2000 to 2006 3 Series Coupe,</li> <li>• 2000 to 2005 3 Series Sports Wagon,</li> <li>• 2000 to 2006 3 Series Convertible,</li> <li>• 2001 to 2006 M3 Coupe,</li> <li>• 2001 to 2006 M3 Convertible,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <u>Mitsubishi Vehicles</u> <ul style="list-style-type: none"> <li>• 2004 to 2005 Lancer, and</li> <li>• 2006 to 2007 Raider;</li> </ul> </li> </ul>

3. To date, the recalls have been quite limited in Canada and include only the following Defective Vehicles:

<ul style="list-style-type: none"> <li>• <u>Honda Vehicle Recalls in Canada</u> <ul style="list-style-type: none"> <li>• 2001 to 2002 Acura 1.7EL,</li> <li>• 2001 to 2003 Acura EL</li> <li>• 2002 to 2003 Acura TL,</li> <li>• 2003 Acura MDX</li> <li>• 2001 to 2003 Honda Accord,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <u>Ford Vehicle Recalls in Canada</u> <ul style="list-style-type: none"> <li>• 2004 Ranger,</li> <li>• 2005 to 2006 GT, and</li> <li>• 2005 to 2007 Mustang</li> </ul> </li> </ul>
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<ul style="list-style-type: none"> <li>• 2001 to 2003 Honda Civic,</li> <li>• 2002 to 2003 Honda CR-V,</li> <li>• 2003 Honda Element,</li> <li>• 2002 to 2003 Honda Odyssey, and</li> <li>• 2003 Honda Pilot</li> </ul>	
<ul style="list-style-type: none"> <li>• <u>Toyota Vehicle Recalls in Canada</u> <ul style="list-style-type: none"> <li>• 2002 to 2003 Lexus SC 430,</li> <li>• 2003 to 2004 Toyota Corolla,</li> <li>• 2003 to 2004 Toyota Matrix,</li> <li>• 2002 to 2003 Toyota Sequoia, and</li> <li>• 2003 to 2004 Toyota Tundra,</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <u>Mazda Vehicle Recalls in Canada</u> <ul style="list-style-type: none"> <li>• 2004 Mazda6, and</li> <li>• 2004 Mazda RX-8</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <u>Subaru Vehicle Recalls in Canada</u> <ul style="list-style-type: none"> <li>• 2003 Baja,</li> <li>• 2004 Legacy,</li> <li>• 2003 to 2004 Outback,</li> <li>• 2004 Impreza, and</li> <li>• 2004 Impreza WRX/STI</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <u>BMW Vehicle Recalls in Canada</u> <ul style="list-style-type: none"> <li>• 2000 to 2006 3 Series</li> </ul> </li> </ul>

4. A comparative chart of the Defective Vehicles which have been recalled to date in the United States and those which have been recalled to date in Canada is produced herein as **Exhibit R-1**;
5. The Vehicle Manufacturer Respondents (defined below) manufactured, distributed, and/or sold the Defective Vehicles with airbags which were plagued by serious, pervasive, and dangerous design and manufacturing defects, which place vehicle occupants at risk of serious injury and/or death;
6. In addition, the Petitioner contends that the Respondents failed to disclose, despite longstanding knowledge, that the Takata airbags are defective and predisposed to violent explosion, (hereinafter the "Design Defect"). The Respondents actively concealed the Design Defect and the fact that its existence would diminish both the intrinsic and the resale value of the Vehicles;
7. By reason of this unlawful conduct, the Petitioner and members of the class:
  - (a) Purchased and/or leased Defective Vehicles that contained defective Takata airbags
  - (b) Have suffered a diminished value of their Defective Vehicles

(c) Have suffered the loss of use of the Defective Vehicles and expenditures for rental vehicles

(d) Have suffered pain, suffering, trouble and inconvenience;

## **B) The Respondents**

### **(i) The Takata Respondents**

8. Respondent Takata Corporation (hereinafter "Takata Corp.") is a Japanese corporation with its head office in Tokyo. It is the second largest manufacturer of automotive safety devices, including airbags. In 2007, airbags made up 37.3% of Takata Corp.'s automotive safety product business. It is a vertically-integrated manufacturer of component parts in its own facilities. For example, it develops safety technology components of Takata-manufactured airbags, including cushions and inflators. It is a specialized supplier of automotive safety systems that designs, manufactures, tests, markets, distributes, supplies, and sells airbags, the whole as appears more fully from a copy of Respondent Takata Corp.'s 2007 Annual Report, produced herein as **Exhibit R-2**;
9. Takata Corp. has, since at least 2007, claimed to prioritize driver safety as its "dream" (Exhibit R-1). Based on that "dream," they claimed to be "motivated by the preciousness of life" and pledged to both "communicate openly and effectively." Takata has failed to live up to its dream by designing, manufacturing, testing, marketing, distributing, supplying, and selling airbags that can cause serious bodily injury or even death;
10. Respondent TK Holdings, Inc. (hereinafter "TK Holdings") is an American holding corporation with its head office in Michigan. It is a subsidiary of Respondent Takata Corp. that designs, manufactures, tests, markets, distributes, supplies, and sells airbags. TK Holdings both directly and through subsidiaries, owns, and operates fifty-six manufacturing plants in twenty countries;
11. Respondent Highland Industries, Inc. (hereinafter "Highland") is an American corporation with its head office in North Carolina. It is a subsidiary of Respondent Takata Corp. that manufactures industrial and automotive textile products including airbag fabrics for the automotive airbag industry;
12. During the Class Period, Respondents Takata Corp., TK Holdings, and Highland (collectively, "Takata"), either directly or through a wholly-owned subsidiary, agent or affiliate, designed, manufactured, tested, marketed, distributed, supplied, and/or sold all the defective airbags recalled by the NHTSA that are the subject of the present Motion for installation in the Defective Vehicles throughout Canada, including within the province of Quebec;

13. Given the close ties between the Takata Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

**(ii) The Vehicle Manufacturer Respondents**

• The Honda Respondents

14. Respondent Honda Canada Inc. (hereinafter “Honda Canada”) is a Canadian corporation with its head office in Markham, Ontario. It is a wholly-owned subsidiary of Honda Motor Co., Ltd. that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-3**;

15. Respondent Honda Motor Co., Ltd. (hereinafter “Honda Motor”) is a Japanese corporation with its head office in Tokyo. It is the parent company of Honda Canada (Exhibit R-3) and it is the third largest Japanese car maker by sales. Honda Motor is the Takata Respondents’ biggest customer. It manufactures and sells motorcycles, automobiles, and power products through independent retail dealers, outlets, and authorized dealerships primarily in Japan, North America, Europe, and Asia;

16. Honda vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following Honda Vehicles have been recalled in the U.S. for having the Defective Takata airbags:

- 2001 to 2007 Honda Accord,
- 2001 to 2005 Honda Civic,
- 2002 to 2006 Honda CR-V,
- 2003 to 2011 Honda Element,
- 2002 to 2004 Honda Odyssey,
- 2003 to 2007 Honda Pilot,
- 2006 Honda Ridgeline,
- 2003 to 2006 Acura MDX,
- 2002 to 2003 Acura TL/CL, and
- 2005 Acura RL;

17. During the Class Period, Respondents Honda Canada, and Honda Motor (collectively, “Honda”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and/or sold automobiles, motorcycles, and power products through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;

18. Given the close ties between the Honda Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- The Toyota Respondents

19. Respondent Toyota Canada Inc. (hereinafter “Toyota Canada”) is a Canadian corporation with its head office in Scarborough, Ontario. It is a wholly-owned subsidiary of Toyota Motor Corporation that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-4**;

20. Respondent Toyota Motor Corporation (hereinafter “Toyota Motor”) is a Japanese Corporation with its head office in Toyota City. It is the parent company of Toyota Canada. It is the world’s largest automaker;

21. Respondent Toyota Motor Engineering & Manufacturing North America, Inc. (hereinafter “Toyota North America”) is an American corporation with its head office in Kentucky. It is a subsidiary of Toyota Motor and it is responsible for Toyota Motor’s engineering design and development, research and development, and manufacturing activities in Canada, the United States, and Mexico;

22. Toyota Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following Toyota Vehicles have been recalled in the U.S. for having the Defective Takata airbags:

- 2002 to 2005 Lexus SC,
- 2002 to 2005 Toyota Corolla,
- 2003 to 2005 Toyota Matrix,
- 2002 to 2005 Toyota Sequoia,
- 2003 to 2005 Toyota Tundra, and
- 2003 to 2005 Pontiac Vibe;

23. During the Class Period, Respondents Toyota Canada, Toyota Motor, and Toyota North America (collectively, “Toyota”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and/or sold automobiles throughout Canada, including within the province of Quebec;

24. Given the close ties between the Toyota Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- The Subaru Respondents

25. Respondent Subaru Canada, Inc. (hereinafter “Subaru Canada”) is a Canadian corporation with its head office in Mississauga, Ontario. It is a wholly-owned subsidiary of Respondent Fuji Heavy Industries, Ltd. that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-5**;



26. Respondent Fuji Heavy Industries, Ltd. (hereinafter “Fuji”) is a Japanese corporation with its head office in Tokyo. It is the parent company of Respondent Subaru Canada. Fuji develops, manufactures, distributes and services passenger cars and their components under the Subaru brand. Fuji also handles the manufacture, repair, and sales of aerospace-related machinery; and the manufacture, sales, and repairs of generators, engine-equipped machinery, agricultural machinery, construction machinery and other machine tools;
27. Subaru Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following Subaru Vehicles have been recalled in the U.S. for having the Defective Takata airbags:
- 2003 to 2005 Baja,
  - 2003 to 2005 Legacy,
  - 2003 to 2005 Outback, and
  - 2004 to 2005 Impreza;
28. Class Period, Respondents Subaru Canada, and Fuji (collectively, “Subaru”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and/or sold automobiles and motorcycles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;
29. Given the close ties between the Subaru Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;
- The BMW Respondents
30. Respondent BMW Canada Inc. / BMW Group Canada (hereinafter “BMW Canada”) is a Canadian corporation with its head office in Richmond Hill, Ontario;
31. Respondent BMW of North America, LLC (hereinafter “BMW NA”) is an American corporation with its head office in New Jersey. It is a subsidiary of BMW AG;
32. Respondent BMW Manufacturing Co. LLC (hereinafter “BMW Manufacturing”) is an American corporation with its head office in South Carolina. It is a subsidiary of BMW AG and it is part of its global manufacturing network;
33. Respondent BMW AG is a German corporation with its head office in Munich. It is a parent company of Respondents BMW NA and BMW Manufacturing. BMW AG manufactures and sells automobiles and motorcycles through independent retailers, outlets, and authorized dealerships in North America and throughout the world;



34. BMW Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following BMW Vehicles have been recalled in the U.S. for having the Defective Takata airbags:

- 2000 to 2005 3 Series Sedan,
- 2000 to 2006 3 Series Coupe,
- 2000 to 2005 3 Series Sports Wagon,
- 2000 to 2006 3 Series Convertible,
- 2001 to 2006 M3 Coupe, and
- 2001 to 2006 M3 Convertible;

35. During the Class Period, Respondents BMW Canada, BMW NA, BMW Manufacturing, and BMW AG (collectively, "BMW"), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and/or sold automobiles, and motorcycles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;

36. Given the close ties between the BMW Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- The Nissan Respondents

37. Respondent Nissan Canada Inc. (hereinafter "Nissan Canada") is a Canadian corporation with its head office in Mississauga, Ontario. It is a subsidiary of Respondents Nissan North America, Inc. and Nissan Motor Co., Ltd. that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-6**;

38. Respondent Nissan North America, Inc. (hereinafter "Nissan North America") is an American corporation with its head office in Tennessee. It is a parent company of Respondent Nissan Canada and a subsidiary of Respondent Nissan Motor Co., Ltd. Nissan North America's operations consist of automotive styling, engineering, consumer and corporate financing, sales and marketing and distribution and manufacturing;

39. Respondent Nissan Motor Co., Ltd. (hereinafter "Nissan Motor") is a Japanese corporation with its head office in Kanagawa. It is a parent company of Respondent Nissan Canada and it is Japan's second-largest automotive company. Nissan Motor manufactures, distributes, services, and sells automobiles through independent retailers, outlets, and authorized dealerships worldwide, including in Canada, under the Nissan, Infiniti, and Datsun brands;

40. Nissan Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following Nissan Vehicles have been recalled in the U.S. for having the Defective Takata airbags:



- 2001 to 2003 Nissan Maxima,
  - 2001 to 2004 Nissan Pathfinder,
  - 2002 to 2004 Nissan Sentra,
  - 2001 to 2004 Infiniti I30/I35;
  - 2002 to 2003 Infiniti QX4, and
  - 2003 to 2005 Infiniti FX35/FX45;
41. During the Class Period, Respondents Nissan Canada, Nissan North America, and Nissan Motor (collectively, “Nissan”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold automobiles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;
42. Given the close ties between the Nissan Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;
- The Mazda Respondents
43. Respondent Mazda Canada Inc. (hereinafter “Mazda Canada”) is a Canadian corporation with its head office in Richmond Hill, Ontario. It is a wholly-owned subsidiary of Respondent Mazda Motor Corporation that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-7**;
44. Respondent Mazda Motor Corporation (hereinafter “Mazda Motor”) is a Japanese corporation with its head office in Hiroshima. It is the parent company of Respondent Mazda Canada. Nissan Motor manufactures and sells automobiles through independent retailers, outlets, and authorized dealerships in North America, Europe, and Asia;
45. Mazda Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following Mazda Vehicles have been recalled in the U.S. for having the Defective Takata airbags:
- 2003 to 2007 Mazda6,
  - 2006 to 2007 MazdaSpeed6,
  - 2004 to 2008 Mazda RX-8,
  - 2004 to 2005 MPV, and
  - 2004 to B-Series Truck;
46. During the Class Period, Respondents Mazda Canada and Mazda Motor (collectively, “Mazda”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold automobiles through independent retailers,



outlets, and authorized dealerships throughout Canada, including within the province of Quebec;

47. Given the close ties between the Mazda Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- The Ford Respondents

48. Respondent Ford Motor Company of Canada Limited (hereinafter “Ford Canada”) is a Canadian corporation with its head office in Oakville, Ontario. It is a wholly-owned subsidiary of Respondent Ford Motor Company that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-8**;

49. Respondent Ford Motor Company (hereinafter “Ford Motor”) is an American corporation with its head office in Michigan. It is the parent company of Respondent Ford Canada and it is one of the “Big Three” in the United States Automotive Industry<sup>1</sup>. Ford Motor develops, manufactures, distributes, and services vehicles, parts, and accessories worldwide, including in Canada and in Quebec;

50. Ford Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following Ford Vehicles have been recalled in the U.S. for having the Defective Takata airbags:

- 2004 Ranger,
- 2005 to 2006 GT,
- 2005 to 2007 Mustang,

51. During the Class Period, Respondents Ford Canada, and Ford Motor (collectively, “Ford”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured, distributed and serviced and/or sold automobiles, parts, and accessories throughout Canada, including within the province of Quebec;

52. Given the close ties between the Ford Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- (iii) The GMC Respondents

53. Respondent General Motors of Canada Limited (hereinafter “GM Canada”) is a Canadian corporation with its head office in Pointe-Claire, Quebec. It is a wholly-owned subsidiary of General Motors Corporation that does business throughout

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<sup>1</sup> When used in relation to the United States automotive industry, most generally refers to the three major American automotive companies: Respondents Ford Motor Company, General Motors Corporation, and Chrysler Group LLC.

Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-9**;

54. Respondent General Motors Corporation (hereinafter “GM Corp.”) is an American corporation with its head office in Detroit. It is the parent company of Respondent GM Canada and it is one of the “Big Three” in the United States Automotive Industry. GM Corp. develops, manufactures, distributes, and services vehicles, parts, and accessories worldwide, including in Canada and in Quebec;

55. GMC Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following GMC Vehicles have been recalled in the U.S. for having the Defective Takata airbags:

- 2002 to 2003 Buick LeSabre,
- 2002 to 2003 Buick Rendezvous,
- 2002 to 2003 Cadillac DeVille,
- 2002 to 2003 Chevrolet Trailblazer,
- 2002 to 2003 Chevrolet Impala,
- 2002 to 2003 Chevrolet Monte Carlo,
- 2002 to 2003 Chevrolet Venture,
- 2002 to 2003 GMC Envoy and XL,
- 2002 to 2003 Oldsmobile Aurora,
- 2002 to 2003 Oldsmobile Bravada,
- 2002 to 2003 Oldsmobile Silhouette,
- 2002 to 2003 Pontiac Bonneville,
- 2002 to 2003 Pontiac Montana,
- 2003 to 2005 Pontiac Vibe,
- 2005 Saab 9-2X, and
- 2008 to 2013 GMC Acadia;

56. During the Class Period, Respondents GM Canada, and GM Corp. (collectively, “GMC”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured, distributed and serviced and/or sold automobiles, parts, and accessories throughout Canada, including within the province of Quebec;

57. Given the close ties between the GMC Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

(iv) The Chrysler Respondents

58. Respondent Chrysler Canada Inc. (hereinafter “Chrysler Canada”) is a Canadian corporation with its head office in Windsor, Ontario. It does business throughout Canada, including within the province of Quebec;



59. Respondent Chrysler Group LLC (hereinafter “Chrysler Group”) is an American corporation with its head office in Michigan and it is one of the “Big Three” in the United States Automotive Industry. Chrysler Group markets and distributes Chrysler vehicles, parts and accessories throughout the United States and Canada;

60. Chrysler Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following Chrysler Vehicles have been recalled in the U.S. for having the Defective Takata airbags:

- 2003 to 2008 Dodge Ram 1500,
- 2005 to 2008 Dodge Ram 2500,
- 2006 to 2008 Dodge Ram 3500,
- 2006 to 2008 Dodge Ram 4500,
- 2008 to Dodge Ram 5500,
- 2005 to 2008 Dodge Durango,
- 2005 to 2008 Dodge Dakota,
- 2005 to 2008 Chrysler 300, and
- 2007 to 2008 Chrysler Aspen;

61. During the Class Period, Respondents Chrysler Canada and Chrysler Group (collectively, “Chrysler”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold automobiles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;

62. Given the close ties between the Chrysler Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

(v) The Mitsubishi Respondents

63. Respondent Mitsubishi Canada Limited (hereinafter “Mitsubishi Canada”) is a Canadian corporation with its head office in Vancouver, British Columbia. It is a wholly-owned subsidiary of Mitsubishi International Corporation that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-10**;

64. Respondent Mitsubishi International Corporation (hereinafter “Mitsubishi International”) is an American corporation with its head office in New York. It markets and distributes Mitsubishi vehicles, parts and accessories throughout the United States and Canada;

65. Mitsubishi Vehicles that are sold in Canada contain airbags manufactured by the Takata Respondents. To date, the following Mitsubishi Vehicles have been recalled in the U.S. for having the Defective Takata airbags:

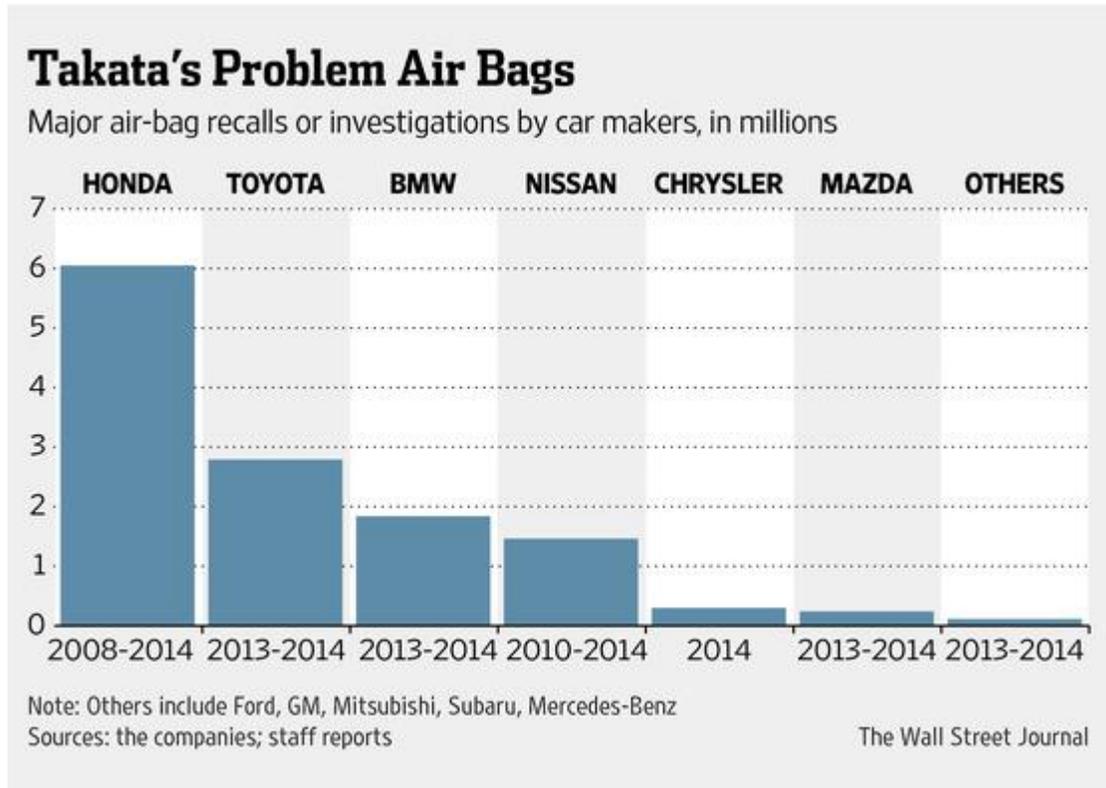


- 2004 to 2005 Lancer, and
- 2006 to 2007 Raider;

66. During the Class Period, Respondents Mitsubishi Canada and Mitsubishi International (collectively, “Mitsubishi”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold automobiles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;

67. Given the close ties between the Mitsubishi Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

68. All ten (10) Respondents Honda, Toyota, Subaru, BMW, Nissan, Mazda, Ford, Chrysler, GMC, and Mitsubishi are collectively referred to as the “Vehicle Manufacturer Respondents”;

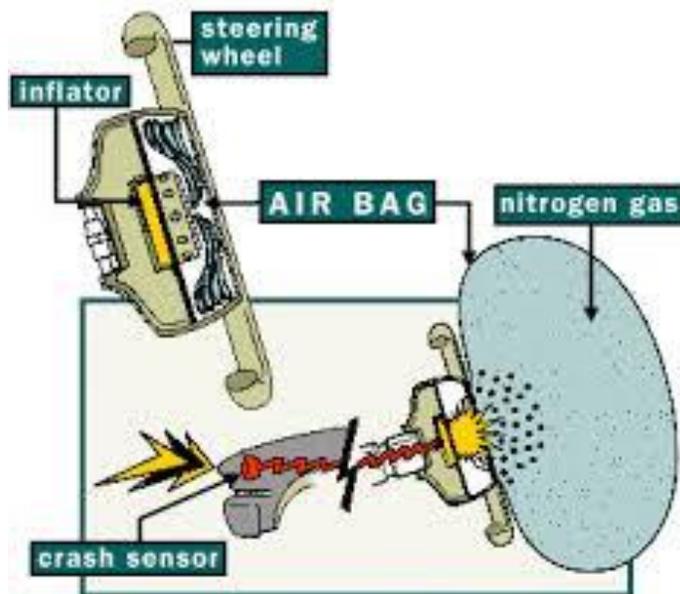


**C) The Situation**

**(i) Airbags Explained**

69. An airbag is a vehicle safety device that is built into steering wheels (as is depicted below) and dashboards, and into the sides of some vehicles. It is an occupant restraint system consisting of a flexible fabric envelope or cushion

designed to inflate or “launch” rapidly with nitrogen gas when there is very fast deceleration, such as in the event of an accident. Its purpose is to cushion occupants during a crash and to provide protection to their bodies from collusion with objects inside the vehicle, such as the steering wheel or windshield;



70. Airbags protect and save lives. They are not intended to explode or to eject shrapnel<sup>2</sup> into people’s eyes, necks, faces, or other body parts, which can cause death or horrific injury - the very opposite of what the airbag is meant for;
71. Most airbags are inflated through pyrotechnic means and can only be operated once;
72. While the first airbag designs were introduced to passenger vehicles during the 1970s with only limited success, they became mainstream in the late 1980s and early 1990s with cars containing a driver airbag and in some cars, a front passenger airbag. Many modern vehicles now include four or more airbags, and consumers and passengers have come to trust and rely on airbags and their manufacturers to ensure occupant safety;
73. The Takata airbags contained in the Defective Vehicles, however, not only cannot be relied upon to provide the expected safety, but in many cases can send metal fragments into a car’s cabin, injuring drivers and passengers;

## (ii) The Takata Airbags

<sup>2</sup> Shrapnel are small metal pieces that scatter outwards from an exploding bomb, shell, or mine, or in the present context, from the defective airbags.

74. Takata is one of the largest manufacturers and suppliers of airbags in the world, accounting for approximately one-fifth of the global market. As such, millions of drivers and passengers have come to rely on its airbags for safety;
75. This case arises from the recent string of recalls and the Respondents' deceptive and unlawful actions associated with the fatally defective airbags manufactured by the Takata Respondents and installed by the Vehicle Manufacturer Respondents in nearly eight million (8,000,000) vehicles;
76. The Respondents manufactured or installed defective airbags in millions of vehicles, actively concealed the defects from federal regulators and from the public, and, only after their ability to downplay the extent of the harm caused by the faulty airbags was exhausted, did they finally acknowledged the massive scope of the problem;
77. At issue is the inflator component. Takata's inflator uses a different propellant than the majority of its big rivals, which analysts say is cheaper, but can be particularly volatile, the whole as appears more fully from a copy of the Wall Street Journal article entitled "Air Bag Maker Faces Rocky Road After Series of Recalls" dated October 1, 2014, produced herein as **Exhibit R-11**;

**(iii) The Defect and the Environment in which it Proliferated**

78. In the 2000s, Takata engaged in aggressive expansion and opened plants in locations ranging from Malaysia to Morocco to Uruguay. By 2006, Takata had grown into a company of 35,842 employees, with 46 factories in 17 countries, where nearly 80% of its ¥466 billion in revenue coming from outside Japan. Communication between the Japanese, the European and North American divisions was poor (Exhibit R-11);
79. It was during this period of rapid growth that the problems relating to the airbag recalls originated;
80. By 2001, Takata made the business decision to switch propellant compounds from tetrazole, a reliable and effective compound for inflating airbags, to ammonium nitrate, which is highly sensitive to temperature changes and moisture and breaks down over time causing violent combustion. This decision was based on the fact that while tetrazole could be expensive, the new compound based on ammonium nitrate was "cheap, unbelievably cheap", the whole as appears more fully from a copy of the New York Times article entitled "Takata's Switch to Cheaper Airbag Propellant Is at Center of Crisis" dated November 19, 2014, produced herein as **Exhibit R-12**;
81. Ammonium nitrate is an inexpensive chemical commonly found in fertilizer and explosives. It cycles through five solid states. As the vehicle goes from receiving the heat of sunshine to the cold overnight, the temperature swing is large enough

for the ammonium nitrate to change from one phase to another. Ammonium nitrate also readily absorbs moisture from the atmosphere. Together, these two factors render ammonium nitrate tablets prone to damage, (Exhibit R-12);

82. Ammonium nitrate is sensitive to temperature swings, which can change its crystalline structure. The ammonium nitrate in an airbag that has been sitting in the hot sun all day, or out in the cold all night, is not the same compound that was tested in the lab and won't explode in the same way when it's set off. Jimmie Oxley, an explosives expert and professor of chemistry at the University of Rhode Island stated "[o]nce it's partially degraded, it's not what you put in there in the first place", the whole as appears and from a copy of the Businessweek article entitled "Takata Air Bags Share an Explosive Chemical With the Texas Fertilizer Blast" dated November 20, 2014, produced herein as **Exhibit R-13**;

83. The Material Safety Data Sheet ("MSDS") for Ammonium Nitrate prepared by Agrium Inc. a major retail supplier of agricultural products and services in North America, indicates an NFPA<sup>3</sup> reactivity or instability of 3, which is indicated as "serious" and that "in confinement and in the presence of a strong detonation source, the material can explode when subject to sudden shock, pressure, or high temperature" and that the "material supports combustion", the whole as appears more fully from a copy of the MSDS for Ammonium Nitrate dated August 31, 2013 and from a copy of the Wikipedia page entitled "NFPA 704", produced herein *en lisse* as **Exhibit R-14**;

84. While other airbag manufacturers, such as Autoliv and TRW Automotive, stayed away from this explosive compound, Takata began utilizing it regardless of its volatility and the various safety concerns;

85. A former senior engineer with Takata has confirmed "It's a basic design flaw that predisposes this propellant to break apart, and therefore risk catastrophic failure in an inflator [*sic*]." (Exhibit R-12);

86. Instead of focusing on ensuring the safety of the vehicle safety devices, Takata favoured cost savings and increased profits at the expense of human life and welfare;

#### **(iv) The History of the Defect and the Respondents' Knowledge Thereof**

87. The manufacturing defect in Takata's airbags dates back to at least 2001, when some airbags produced by Takata between April 2000 and September 2002 were said to contain manufacturing defects. Takata was aware of the potential defect as early as 1999 and learned the defect had manifested no later than 2001, when the dangers associated with its airbags came to light in Isuzu vehicles and the first recall was issued. Additional recalls were announced by the Vehicle Manufacturer Respondents from 2008 to 2011, the whole as appears more fully from a copy of

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<sup>3</sup> NFPA is the National Fire Protection Association.



the Motor Trend Magazine article entitled “2001 Isuzu Recalls” and from a copy of the Autoblog article entitled “The long history behind Takata's massive airbag recalls - Moisture Is Only Latest In Long Line Of Explanations For Takata's Problem” dated June 23, 2014, produced herein *en l'iasse* as **Exhibit R-15**;

88. Since at least 2001, Takata airbags have killed and horrifically injured scores of people. The Takata Respondents and the Vehicle Manufacturer Respondents knew of the airbag defects for possibly over a decade, yet they failed to swiftly take proper safety measures or even report this crucial information to federal regulators. It has been over a decade and yet, the Respondents are still purportedly grappling with the severity of the problem;
89. In 2004 in Alabama, a Takata airbag violently exploded in a Honda Accord vehicle, shooting out metal fragments and severely injuring the driver. Takata misleadingly stated it could not explain why it happened, falsely called it an “anomaly”, and did not issue a recall or seek involvement of federal safety regulators, the whole as appears more fully from a copy of the New York Times article entitled “Air Bag Flaw, Long Known to Honda and Takata, Led to Recalls” dated September 11, 2014 and from a copy of the Globe and Mail article entitled “Air Bag Flaw, Long Known to Honda and Takata, Led to Recalls” dated September 16, 2014, produced herein *en l'iasse* as **Exhibit R-16**;
90. A former Takata lab employee who examined that airbag reported that the “inflator that ruptured in the Accord and injured the car's driver that year ‘looked like it had exploded, and had a hole punched out of the side of the canister.’” Nevertheless, Honda “determined that the supplier ‘provided a reasonable explanation of this event as an anomaly,’” and did not issue a recall or seek the involvement of federal safety regulators (Exhibit R-16);
91. Although Takata at the time reported to Honda that it was unable to find a cause, according to two former Takata employees, Takata had secretly tested 50 airbags at its Michigan facility shortly after the incident and determined there was a startling defect with the steel inflators that rendered them vulnerable to rupture. Two (2) of the airbag inflators that were tested showed cracks and “rapid disassembly” (or exploded) and Takata engineers theorized that a welding problem with the inflator's canister, which holds the airbag's explosives, made the airbags vulnerable to split or rupture. In response, Takata engineers attempted to design prototypes to remedy the issue. However, the former employees, one of whom was the Vice-President for Engineering, reported that three (3) months later, Takata's management ordered the testing to be stopped and all the testing data and test results to be deleted and destroyed. “All the testing was hush-hush,” one former employee said. “Then one day, it was, ‘Pack it all up, shut the whole thing down.’ It was not standard procedure.” Instead of acknowledging and addressing the dangerous defect, Takata chose to continue manufacturing and selling millions of airbags with a known potentially fatal defect, the whole as appears more fully from a copy of the New York Times article entitled “Takata Saw



and *Hid Risk in Airbags in 2004, Former Workers Say*” dated November 6, 2014, produced herein as **Exhibit R-17**;

92. In addition, Takata faced a series of quality control problems related to its airbags. In particular, airbags were being delivered to automakers wet or damaged. Airbags were not always properly inspected and checks that had been introduced to keep airbags in the appropriate condition were being ignored (Exhibit R-17);
93. Takata was aware that the mishandling of airbags and airbag inflators created a danger. A Takata local manager noted in October 2005 that “[t]he propellant arrangement inside is what can be damaged when the airbags are dropped,” which is “why it is important to handle our product properly” (Exhibit R-17);
94. Nonetheless, even after stricter quality controls were introduced, Takata’s production facilities did not abide by Takata’s internal safety rules and would resist taking back damaged or wet airbags, in an effort to keep up with the demand of automakers (Exhibit R-17);
95. In 2002, Takata’s airbag manufacturing plant in Mexico allowed a defect rate that was “six to eight times above” acceptable limits, or roughly 60 to 80 defective parts for every 1 million airbag inflators shipped;
96. Only in 2008 did U.S. safety regulators begin to slowly become apprised of the serious dangers posed by the Takata airbags and, even then, federal officials lacked a complete and accurate understanding of the risks due to the Respondents’ obfuscation and destruction of relevant documents. Indeed, Honda received three additional reports of airbag rupture incidents in February, June, and August of 2007, but never issued recalls or told U.S. safety regulators that the incidents involved exploding airbags. Regulatory filings state Honda wished to await the results of a “failure mode analysis” being conducted by Takata (Exhibit R-16). Finally, in November 2008, Honda informed U.S. authorities that it had a problem with some of the Takata airbags installed in its vehicles. However, at that time Honda recalled only 4,000 Accords and Civics;
97. Honda settled financial claims with the individuals injured by the airbags. These settlements were confidential;
98. Approximately three (3) months later in 2007, Takata concocted a story about what went wrong, claiming that between late 2001 and late 2002, workers at a Takata factory in Monclova, Mexico, had left moisture-sensitive explosives used in airbag inflators on the plant floor, making them prone to “overly energetic combustion” (Exhibit R-16). Takata purportedly told Honda “that by November 2002, it had overhauled production processes to ‘assure proper handling’ of all its explosives”. In truth, however, Takata knew its unstable propellant was the cause;



99. Based on those findings and assurances, Honda and Takata “elected to continue monitoring the problem, according to Honda” (Exhibit R-16). Nevertheless, “internal documents suggest Takata engineers scrambled as late as 2009 to repair a machine at its Monclova plant that pressed explosive propellant powder into pellets after ‘inflaters [sic] tested from multiple propellant lots showed aggressive ballistics,’ according to the internal presentation in June 2009 (Exhibit R-17);
100. Then, without notifying the vehicles’ owners, “Honda started collecting Takata-made airbag inflaters [sic] returned to dealers as part of unrelated warranty claims, which were then sent to Takata engineers. Old airbag inflaters [sic] from Honda cars at scrap yards were also retrieved and studied” (Exhibit R-17). After a yearlong study, “Takata engineers told Honda that they were convinced moisture was at the root of the defect. But only a small number of inflaters [sic] were affected, Takata told the Honda officials”;
101. Despite this knowledge, neither Honda nor Takata publicly disclosed the danger of the Takata-manufactured exploding airbags to consumers for many years after the first reported incident in 2004, “despite red flags – including three additional ruptures reported to Honda in 2007” (Exhibit R-17);

- **2008**

- a) U.S. Recall 08V593000**

102. Takata shared the results of the inflator survey analysis with Honda in November of 2008. That analysis indicated an airbag inflator issue. The results triggered a Honda recall, but for only about 3,940 of its vehicles. This recall occurred over four (4) years after the first airbag explosion incident in a Honda car, the whole as appears more fully from a copy of the NHTSA Recall List for Honda, dated June 6, 2001 to November 4, 2014, produced herein as **Exhibit R-18**;
103. The November 2008 recall involved certain 2001 Honda Accord and Civic vehicles to replace airbags that “could produce excessive internal pressure,” causing “the inflator to rupture,” spraying metal fragments through the airbag cushion (Exhibit R-17). Honda reported to NHTSA at that time “that it had identified all ‘possible vehicles that could potentially experience the problem’” (Exhibit R-16);

- b) Transport Canada Recall #2008414**

104. On November 18, 2008, the Honda Respondents issued a similar recall in Canada involving certain 2001 and 2002 Honda Accord, Civic, Acura TL and 1.7EL model vehicles to replace driver side airbags “that could produce excessive internal pressure”, causing “the inflator to rupture and metal fragments could pass through the airbag cushion material and cause injury to vehicle occupants”.



91,447 Honda vehicles were affected, the whole as appears more fully from a copy of the Transport Canada Recall #2008414 dated November 18, 2008, produced herein as **Exhibit R-19**;

105. The Vehicle Manufacturer Respondents were on notice as early as 2008 when Honda first notified regulators of a problem with its Takata airbags. The Vehicle Manufacturer Respondents, knew or should have known that there may have been a serious safety problem with their airbags and should have launched their own investigations and notified customers;

- **2009: U.S. Recall 09V259000**

106. In April 2009, less than six (6) months after the limited 2008 recall, a Takata airbag in a Florida resident's Honda Civic exploded after a minor accident. The explosion sent a two-inch piece of shrapnel from the airbag flying into the driver's neck. Although the driver survived, when highway troopers found her, blood was gushing from a gash in her neck and they were baffled by the extent of her injuries. At Honda, engineers soon linked the accident to the previous ruptures (Exhibit R-16). The driver's car was not part of the 2008 recall described above;

107. There have been scores of reports of exploding airbags, one of which occurred the following month, in May 2009 and involved an 18-year-old driver of a 2001 Honda Accord, who bumped into a car in a parking lot, causing an explosion of shrapnel that sliced her carotid artery causing her to bleed to death. Her vehicle was not subject to the 2008 recall that Honda had issued six months previously;

108. Following this accident and fatality, "Honda only filed the required early warning reports, which do not allow for specifics about the [airbag] ruptures" (Exhibit R-16);

109. It wasn't until two (2) months after her death that Honda expanded its 2008 recall to approximately 440,000 vehicles on July 8, 2009, summoning back additional 2001 and 2002 Acura, Civic, and Accord models;

110. Takata then reported to Honda that the defective airbag components had been made at its factory in Moses Lake, Washington. At the time, Takata engineers explained to Honda that "[b]etween 2000 and 2002, a flaw in a machine that presses air bag explosives into wafers had made the explosives unstable." The Takata engineers further explained to Honda that with "the defective air bags, explosives in the metal inflater [*sic*], which would normally burn down and produce the nitrogen gas to inflate the air bag, instead burn aggressively and cause the inflater [*sic*] to burst, shooting hot fragments through the air bag's fabric" (Exhibit R-16);

111. After two (2) years of investigation, "Honda and Takata found that a machine at Takata's Moses Lake factory in Washington state had failed to compress



chemicals firmly enough. That left the inflators vulnerable to moisture, potentially causing the bags to inflate more forcefully than they were supposed to” (Exhibit R-11). At that time, Takata “acknowledged that the defect covered a wider range of vehicles than initially estimated, but explained that the plant had made numerous upgrades to its machinery in late 2002, which it thought had improved the quality of its explosives” (Exhibit R-16);

112. In June of 2009, Takata provided a follow up report to Honda on its November 2008 analysis, stating that issues related to propellant production appeared to have caused the improper inflator performance. Honda subsequently received two more claims of “unusual deployments”;
113. In August 2009, NHTSA Recall Management Division sent Honda an information request to explain why it did not include 2009 Recall vehicles in the 2008 Recall, and to evaluate the timeliness of Honda’s actions. NHTSA Recall Management Division further requested that Honda provide complaints, lawsuits, warranty claims, and field reports, along with an explanation of the unusual deployments and Honda’s investigative efforts;
114. In Honda’s September 2009 reply to NHTSA, the automaker said that its information about the “unusual deployments” came from Takata: “We understood the causal factors to be related to airbag propellant due to handling of the propellant during airbag inflator module assembly.” Honda further stated:

Based on our current understanding of the causal factors and the characteristics of suspect inflators as determined by TK Holdings, Inc., we believe that we have included all vehicles that could be affected by this defect,

The whole as appears more fully from a copy of the letter sent from Respondent Honda Motor to the NHTSA dated September 16, 2009, produced herein as **Exhibit R-20**;

115. Honda also reported, based on information from Takata, the problem with the airbags was isolated to the “production of the airbag propellant prior to assembly of the inflators.” Specifically, the cause was “related to the process of pressing the propellant into wafers that were later installed into the inflator modules,” and limited to “one production process” involving one high-precision compression press that was used to form the propellant into wafers, the automaker told NHTSA (Exhibit R-20);
116. Honda disclosed to NHTSA that it had fielded eight (8) complaints and one (1) lawsuit related to the 2008 and 2009 recalls. Honda also, for the first time, told NHTSA about the 2004 incident involving an “unusual deployment” of the vehicles airbag. Honda claimed that it “only recently were reminded of this incident,” and

that, until recently, Honda “had not associated it with the [2008 recall] campaign” (Exhibit R-20);

117. At least four (4) complaints have been submitted to NHTSA by Honda vehicle operators reporting defective airbag deployments that have released metal shards into the cabin of the Honda vehicle;

- **Takata’s Contact with NHTSA**

118. In its communications with NHTSA, Takata continually gave misleading or incorrect information about the airbags it manufactured that were part of the recalls;

119. On November 20, 2009, NHTSA requested information from Takata as part of their ongoing investigation into the airbag inflators that triggered the 2009 recall;

120. In December 2009, a Honda Accord hit a mail truck in Virginia. The vehicle’s airbag exploded, “propelling shrapnel into [the driver’s] neck and chest, and she bled to death in front of her three children, according to a lawsuit filed by her family” (Exhibit R-16);

121. Takata submitted a partial response to NHTSA on December 23, 2009 (the “Partial Response”), and then a full response on February 19, 2010 (the “Full Response”). Both responses provided vague and misleading information about the seriousness of the problem, the whole as appears more fully from a copy of the letter sent from Respondent Honda Motor to the NHTSA dated December 23, 2009 and from a copy of the letter sent from Respondent Honda Motor to the NHTSA dated, February 19, 2010, produced herein *en liasse* as **Exhibit R-21**;

122. In both responses, Takata asserted that there were no substantive design differences between the inflators in the airbags at issue in the two (2) recalls. However, in the Full Response, Takata states that there were, in fact, differences in the production processes between the lots;

123. In both responses, Takata asserted that the defects only existed in specific lots manufactured between certain dates. They claimed that the inflators involved in the 2008 recall were manufactured between October 29, 2000 and December 1, 2000. They also claimed that inflators involved in the 2009 recall were manufactured between August 23, 2000 and February 25, 2001;

124. Takata did not provide the dates the inflators were shipped, as NHTSA requested, because, as Takata admitted, its records did not have that information. Instead, they gave just the manufacturing dates;

125. In both the Partial Response to NHTSA on December 23, 2009, and the Full Response on February 19, 2010, Takata stated that: “Takata has not provided any

airbag inflators that are the same or substantially similar to the inflators in vehicles covered by the recalls in 2008 and 2009 to any customers other than Honda. The physical characteristics of the inflator housing used in the Honda vehicles subject to these recalls are unique to Honda” (Exhibit R-21). This statement would prove to be wholly untrue;

126. In its Full Response, Takata asserted that the defect identified in the 2009 recall was the result of a single compression press, although Takata recommended to Honda that a small number of other vehicles with propellant processed on a different press be recalled as well;
127. In the Full Response, Takata asserted that the defective parts were all manufactured on a particular press (the “Stokes press”) in a single manufacturing plant. Takata further asserted that while they did manufacture 2,400 inflators using the same process as the defective inflators, the design was different and “[t]herefore Takata is convinced that the inflators sold [redacted] contain no safety-related defect” (Exhibit R-21);
128. Takata wrote in its Full Response that it “believed – [redacted] – that expanding the recall to include all vehicles equipped with inflators manufactured with Stokes propellant produced through and including February 28, 2001 would capture all inflators with tablets that had a risk of producing overly energetic combustion. This recommendation, as well as the analysis that supported it, was presented to Honda on June 12 2009” (Exhibit R-21);
129. The NHTSA was apparently satisfied with Takata’s February 19, 2010 responses to its November 20, 2009 request for information, because on May 6, 2010, NHTSA closed its investigation into the Takata-manufactured airbags. In summary, NHTSA stated:

This [Recall Query “RQ”] investigation was opened to collect and analyze additional information to better evaluate the scope and timeliness of Honda’s two safety recalls addressing rupturing of the driver’s side air bag inflators (08V-593 and 09V-259).

In an earlier response to [Recall Management Division’s “RMD’s”] request for information, Honda indicated that the second recall (09V-259), essentially an expansion of the first (08V-593), was necessary since later information informed that the source of the defect was different than originally postulated, and so the scope of the vehicles affected changed. Honda indicated that it had relied on its supplier of the air bag inflators, Takata, Inc. (Takata), in studying the possible sources of the inflator ruptures and identifying the recall populations. Accordingly, RMD issued a request for information to Takata on November 20, 2009, and Takata provided a partial response on



December 23, 2009. Takata then provided its complete response on February 19, 2010.

Takata informed [Office of Defects Investigation “ODI”] that, after analysis of several ruptured inflators, Takata and Honda initially attributed the defect to handling of the propellant during inflator assembly that could have yielded increased moisture levels that, when coupled with thermal cycling in automobiles over time, could lead to reduced propellant density and overly aggressive combustion during air bag deployment. However, it discovered upon review of inflators returned from the 08V-593 recall campaign, some of which fell outside the manufacturing range when Takata suspected the propellant was exposed to elevated moisture, that the source of the defect was more likely due to problems with a specific compression press (Stokes press) used to form the inflator’s propellant. Specifically, the propellant tablets produced by the press were found to be less dense, and therefore more susceptible to overly aggressive combustion during air bag deployment.

Takata identified the manufacturing time frame over which the tablets were shown to have less dense properties as the end of calendar year 2000. Takata informed Honda of its discovery on or about June 12, 2009. Honda made its defect decision and then notified NHTSA of it on June 30, 2009. Honda then supplemented its filing with an identification of the specific vehicles to be included in the campaign, as well as identifying additional models to be included, on July 29, 2009.

As with the 08V-593 campaign, Takata examined inflators returned from the 09V-259 campaign, and some of which were manufactured outside of the range when the Stokes press was found to have produced less dense propellant (beyond the end of February 2001). It provided those findings to Honda and Honda decided to expand safety recall 09V-259 to include all vehicles with inflators containing propellant manufactured using the Stokes press. Honda notified NHTSA of its decision on February 9, 2010.

Based upon all available information, there is insufficient information to suggest that Honda failed to make timely defect decisions on information it was provided. Also, given that all inflators with propellant manufactured using the Stokes press have been recalled, there are no additional vehicles to be investigated and campaigned. Accordingly, this RQ is closed,

The whole as appears more fully from a copy of the Defect Investigations Results Report of the NHTSA dated May 6, 2010, produced herein as **Exhibit R-22**;



130. In the months following NHTSA's 2009/2010 request for information, Takata engineers came up with yet another explanation for the ruptures: "Beginning in September 2001, machine operators at the Moses Lake plant could have inadvertently switched off an 'auto reject' function that weeded out poorly made explosives that can become unstable, they said, according to regulatory filings and Honda officials." However, Takata assured Honda at the time that, "as part of the upgrades at that plant, in September 2002, the supplier had added a locking mechanism that prevented workers from turning the auto-reject function off, according to filings later made by Takata" (Exhibit R-16);

131. The Wall Street Journal reported that "Honda and Takata discovered more problems. At Moses Lake, employees had switched off a mechanism that automatically checked whether the right amount of propellant was loaded in inflaters [*sic*]; at a plant in Monclova, Mexico, a dehumidifier that kept parts dry hadn't been turned on. At times poor record-keeping meant Honda and Takata couldn't figure out which cars had defective bags. After each discovery, recalls mounted" (Exhibit R-11);

132. Both Honda and Takata represented to the public and NHTSA that the total number of affected vehicles was quite small;

- **2010**

- a) **U.S. Recall 10V041000**

133. In 2010, merely months after its previous recall, Honda announced a third recall for an additional 379,000 vehicles, including 2002 Honda CR-V, 2002 Honda Odyssey, 2003 Honda Pilot, 2002-2003 Acura 3.2TL, and 2003 Acura 3.2CL vehicles, while adding more 2001 and 2002 Accords and Civics to its 2009 recall list (Exhibit R-18);

- b) **Transport Canada Recall #2010042**

134. On February 11, 2010, the Honda Respondents issued a similar recall in Canada involving the 2001-2002 Acura 1.7EL, 2002-2003 Acura TL, 2001-2002 Honda Accord, 2001-2002 Honda Civic, 2002 Honda CR-V and 2002 Honda Odyssey model vehicles relating to the said airbag defect on the driver's side. 41,685 Honda vehicles were affected, the whole as appears more fully from a copy of the Transport Canada Recall #2010042 dated February 11, 2010, produced herein as **Exhibit R-23**;

135. Later in 2010, a 2001 Honda Civic was stopped at a red light in Georgia when the Takata-manufactured airbag "spontaneously deployed." The driver of that vehicle "was hit by metal shards from the canister that housed the air bag's propellant; the shards were sharp enough to penetrate the fabric of the air bag and puncture her neck and carotid artery", the whole as appears more fully from a

copy of the New York Times article entitled “Now the Air Bags Are Faulty, Too” dated June 23, 2014, produced herein as **Exhibit R-24**;

136. At this point, Honda’s explanation for the airbag defects changed yet again. Honda explained that there are two different manufacturing processes utilized in the preparation of an airbag propellant. While one process is within specification, the other is not. Honda’s expanded recall reached those vehicles employing airbags that had utilized manufacturing processes not within specification;

- **2011**

- a) U.S. Recall 11V26000**

137. In April 2011, Honda issued another recall involving an additional 603,241 Honda and Acura vehicles, and involved the following models: 2001-2002 Honda Accord, 2001-2002 Honda Civic, 2002-2003 Honda CR-V, 2002 Honda Odyssey, 2002-2003 Acura TL, and 2003 Acura CL. This recall campaign was related to prior recalls 08V-593 (Nov 2008), 09V-259 (July 2009) and 10V-041 (Feb. 2010) (Exhibit R-17);

138. As part of this recall, Honda filed a Part 573 Defect and Noncompliance report for 2,430 replacement service part airbag modules that might have been installed in vehicles covered by previous recall expansions;

139. In September 2011, a driver in Puerto Rico crashed his Honda Civic, “deploying airbags that launched ‘sharp pieces of metal’ toward him, causing extensive injuries,” according to a lawsuit he filed against Honda. Although Honda reached a confidential settlement with the driver in 2013, it “does not appear to have filed a report on the case with regulators”, the whole as appears more fully from a copy of the New York Times article entitled “It Looked Like a Stabbing, but Takata Airbag Was the Killer” dated October 20, 2014, produced herein as **Exhibit R-25**;

140. Honda reported its death and injury tallies to regulators only in a confidential submission in December 2011, when it issued a fifth limited recall for the rupture defect, according to NHTSA. That recall expanded Recall No. 11V-260 (April 2011) to include an additional 272,779 Honda and Acura vehicles. The expanded recall also included 604 airbags sold as replacement parts, however, because Honda was “unable to ascertain on which vehicles the 604 replacement air bags were installed, an additional 603,241 vehicles” were also recalled (Exhibits R-18 and R-16);

141. Collectively, the total number of Honda and Acura vehicles that had been recalled by the end of 2011 because they contained Takata-manufactured airbags was over 1.7 million vehicles (Exhibit R-18);



### **b) Transport Canada Recall #2011419**

142. On December 5, 2011 the Honda Respondents issued a third recall in Canada for 2001-2002 Acura EL, 2002-2003 Acura TL, 2001-2002 Honda Accord, 2001-2002 Honda Civic, 2002 Honda CR-V and 2002-2003 Honda Odyssey model vehicles relating to the said airbag defect on the driver's side. 26,964 Honda vehicles were affected, the whole as appears more fully from a copy of the Transport Canada Recall #2011419 dated December 5, 2011, produced herein as **Exhibit R-26**;

- **2013**

#### **a) U.S. Recall 13V132000**

143. By 2013, it became clear that the defective airbag issue was far more widespread than Takata or Honda initially reported to NHTSA;

144. According to Honda's 2013 Defect and Noncompliance report, an exploding airbag in Puerto Rico in October 2011 prompted Honda to ask permission from NHTSA to collect "healthy" airbag modules to see if "abnormal combustion was possible." Honda found that even its so-called "healthy" airbags could abnormally combust in certain conditions, the whole as appears more fully from a copy of the Safety Research & Strategies, Inc. article entitled "The Continuing Case of Takata's Exploding Airbags" dated April 17, 2013, produced herein as **Exhibit R-27**;

145. On February 8, 2013, NHTSA and Honda met to discuss the "ongoing investigation" into Honda's defective Takata airbags. Honda stated:

A recreation of propellant production using the same methods as were used during 2001-2002 production periods indicated that it was possible for propellant produced during 2001-2002 to be manufactured out of specification without the manufacturing processes correctly identifying and removing the out of specification propellant.

Separately, Honda was informed by the supplier of another potential concern related to airbag inflator production that could affect the performance of these airbag modules

The whole as appears more fully from a copy of the letter sent from Honda Motor to the NHTSA dated April 10, 2013, produced herein as **Exhibit R-28**;

146. On April 10, 2013, Honda filed a Recall Notification ("2013 recall") for their 2001-2003 Civic, 2002-2003 CR-V, and their 2002 Odyssey vehicles with NHTSA. In that notification, Honda asserted that 561,422 vehicles could be affected by the following part defect (Exhibit R-28):



Defect description:

In certain vehicles, the passenger's (frontal) airbag inflator could produce excessive internal pressure. If an affected airbag deploys, the increased internal pressure may cause the inflator to rupture. In the event of an inflator rupture, metal fragments could be propelled upward toward the windshield, or downward toward the front passenger's foot well, potentially causing injury to a vehicle occupant

**b) Transport Canada Recall #2013111**

147. On April 10, 2013 the Honda Respondents issued a fourth recall in Canada for 2001-2003 Acura EL, 2001-2003 Honda Civic, 2002-2003 Honda CR-V and 2002 Honda Odyssey model vehicles relating to the said airbag defect on the frontal passenger side. 107,786 Honda vehicles were affected in Canada from this fourth recall. The recall details are described as follows:

On certain vehicles, the passenger (frontal) airbag inflator could produce excessive internal pressure during airbag deployment. Increased pressure may cause the inflator to rupture, which could allow fragments to be propelled toward vehicle occupants, increasing the risk of injury. This could also damage the airbag module, which could prevent deployment. Failure of the passenger airbag to fully deploy during a crash (where deployment is warranted) could increase the risk of personal injury to the seat occupant.

The whole as appears more fully from a copy of the Transport Canada Recall #20113111 dated April 10, 2013, produced herein as **Exhibit R-29**;

148. On April 11, 2013, Takata filed a Defect Information Report where it identified the defective airbags as follows:

Certain airbag inflators installed in frontal passenger-side airbag modules equipped with propellant wafers manufactured at Takata's Moses Lake, Washington plant during the period from April 13 2000 (start of production) through September 11, 2002...and certain airbag inflators manufactured at Takata's Monclova, Mexico plant during the period from October 4, 2001 (start of production) through October 31, 2002....

The whole as appears more fully from a copy of the Takata Defect Information Report dated April 11, 2013, produced herein as **Exhibit R-30**;

149. It wasn't until its April 2013 Report (Exhibit R-30) that Takata finally admitted that its affected inflators were installed as original equipment in vehicles



manufactured by car manufacturers other than Honda, including Vehicle Manufacturer Respondents Toyota, Nissan, Mazda, BMW, and GM;

150. Takata asserted that it did not know how many inflators were installed in vehicles, as it did not have those records. While it did not have the information to estimate the number of vehicles affected, Takata still insisted that the total number of installed inflators would be extremely low;

151. Takata described the defect as follows (Exhibit R-30):

Some propellant wafers produced at Takata's plant in Moses Lake, Washington, between April 13, 2000 and September 11, 2002 may have been produced with an inadequate compaction force. . . . In addition some propellant wafers used in inflators produced at Takata's plant in Monclova, Mexico between October 4, 2001 and October 31, 2002, may have been exposed to uncontrolled moisture conditions. These wafers could have absorbed moisture beyond the allowable limits . . . . In both cases propellant could potentially deteriorate over time due to environmental factors, which could lead to over-aggressive combustion in the event of an airbag deployment. This could create excessive internal pressure within the inflator and the body of the inflator could rupture;

152. Also on April 11, 2013, after an additional "two air bag ruptures in Corollas in Japan," Toyota issued a limited recall for vehicles containing defective Takata airbags (Exhibit R-16). Specifically, Toyota issued Recall No. 13V-133, which involved 844,277 Toyota vehicles, and involved the following models: 2003-2004 Toyota Corolla, 2002-2004 Toyota Sequoia, 2003-2004 Toyota Tundra, 2003-2004 Toyota Corolla Matrix, and 2002-2004 Lexus SC (as well as for GM's 2002-2004 Pontiac Vibe, which was made on the same manufacturing line as one of Toyota's models). The recall was necessary "to address a safety defect in the passenger side frontal air bag which may produce excessive internal pressure causing the inflator to rupture upon deployment of the air bag...In the event of a crash necessitating deployment of the passenger's frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the passenger seat occupant or other occupants", the whole as appears more fully from a copy of the NHTSA Recall, produced herein as **Exhibit R-31**;

153. In Canada, on April 11, 2013, Toyota also issued a recall involving 75,000 Toyota vehicles of the following models: 2002-2003 Lexus SC430, 2003-2004 Toyota Corolla, 2003-2004 Toyota Matrix, 2002-2003 Toyota Sequoia, and 2003-2004 Toyota Tundra, the whole as appears more fully from a copy of the Transport Canada Recall #2013113 dated April 11, 2013, produced herein as **Exhibit R-32**;



154. On April 12, 2013, Nissan issued a recall for vehicles containing defective Takata airbags. Recall No. 13V-136 involved approximately 438,302 Nissan vehicles, and involved the following models: 2001-2003 Nissan Maxima, 2001-2003 Nissan Pathfinder, 2002-2003 Nissan Sentra, 2003 Infiniti FX35, 2003 Infiniti FX45, 2001 Infiniti I30, 2002-2003 Infiniti I35, and 2002-2003 Infiniti QX4. The recall was needed “to address a safety defect in the passenger side frontal air bag which may produce excessive internal pressure causing the inflator to rupture upon deployment of the air bag. ... In the event of a crash necessitating deployment of the passenger’s frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the passenger seat occupant or other occupants”, the whole as appears more fully from a copy of the NHTSA Recall, produced herein as **Exhibit R-33**;

- **Recalls and Notices Relating to Defective Airbag Inflators in Non-Honda Vehicles**

155. In April of 2013, based on Takata’s new admissions (including Exhibit R-29), six (6) major automakers, including Nissan, Mazda, BMW, Pontiac, and Honda, issued recalls of 3.6 million vehicles containing Takata airbags;

156. In Canada on April 11, 2013, Mazda issued a recall involving 26 vehicles of the 2004 Mazda6 model, the whole as appears more fully from a copy of the Transport Canada Recall #2013112 dated April 11, 2013, produced herein as **Exhibit R-34**;

157. In September 2013, a California driver was killed after the airbag in his 2002 Acura ruptured. As The New York Times reported (Exhibit R-25):

The authorities have not determined a reason for the injuries, though his coroner’s report cited tears in his airbag and facial trauma from a foreign object.

And problems persist with Honda’s reporting of potential defects.

In at least four more recent suspected ruptures, including the one linked to [the California driver’s] death, Honda has not filed a so-called early warning report with safety regulators, as is required in cases where there is a claim of defect that resulted in an injury or death, according to case lawyers and legal filings;

158. Chrysler and Ford similarly announced limited regional NHTSA recalls for vehicles originally sold or currently registered in Florida, Puerto Rico, Hawaii, or the U.S. Virgin Islands, and equipped with Takata airbag inflators;



159. In June 2014, a low-speed accident involving a 2005 Honda Accord in California caused the car's driver air bag "to 'detonate,' sending hot metal and plastic shrapnel into the cabin" (Exhibit R-16);
160. On June 11, 2014, the NHTSA's Office of Defects Investigation ("ODI") published an ODI Resume for a preliminary evaluation of Investigation which stated that the NHTSA was opening an investigation "in order to collect all known facts from [Takata] and the vehicle manufacturers that it believes may have manufactured vehicles equipped with inflators produced during the same period as those that have demonstrated rupture events in the field", the whole as appears more fully from a copy of the NHTSA ODI Resume dated June 11, 2014, produced herein as **Exhibit R-35**;
161. Also on June 11, 2014, Takata informed the NHTSA that it "believes that an [sic] number of the inflators identified above were provided to the following vehicle manufacturers for use in vehicles sold in the United States (the manufacturers are listed in alphabetical order): BMW, Chrysler, Ford, Honda, Mazda, Nissan, and Toyota." Takata's June 11, 2014 letter further stated:

If we determine that any of those inflators were sold to other vehicle manufacturers, we will let you know promptly.

Takata is not certain which models or model years of vehicles are equipped with the subject inflators, and it does not know how many of those vehicles were sold in or are registered in the States to be covered by the requested field actions. That information will need to be obtained from the affected vehicle manufacturers.

The whole as appears more fully from a copy of the letter from Takata to the NHTSA dated June 11, 2014, produced herein as **Exhibit R-36**;

162. Accordingly, the NHTSA announced that BMW, Chrysler, Ford, Honda, Mazda, Nissan, and Toyota were conducting limited regional recalls to address a possible safety defect involving Takata brand airbag inflators. The action was influenced by an NHTSA investigation into six (6) reports of airbag inflator ruptures, all of which occurred in Florida and Puerto Rico;
163. Additionally, on June 11, 2014, Toyota issued a second recall for vehicles containing defective Takata airbags. This recall involved over 2.3 million vehicles worldwide, and over 844,000 vehicles in the United States. Specifically, Recall No. 14V-312 involved 844,277 Toyota vehicles, and involved the following models: 2002-2004 Toyota Sequoia, 2003-2004 Toyota Corolla, 2003- 2004 Toyota Corolla Matrix, 2003-2004 Toyota Tundra, and 2002-2004 Lexus SC (as well as the 2003-2004 Pontiac Vibe vehicles, which were made on the same manufacturing line as one of Toyota's models). The recall was necessary "to address a safety defect in the passenger side frontal air bag inflator which may



produce excessive internal pressure causing the inflator to rupture upon deployment of the air bag. ... In the event of a crash necessitating deployment of the front passenger's frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the passenger seat occupant or other occupants" the whole as appears more fully from a copy of the NHTSA Recall dated June 11, 2014, produced herein as **Exhibit R-37**;

164. Toyota's expanded recall of 2.3 million vehicles followed Takata's admission that it had "failed to keep adequate quality-control records, making it difficult to identify vehicles with potentially defective air bags" (Exhibit R-24). The expanded recall was "the second time Toyota has had to recall the vehicles because a defective inflator for the passenger-side air bag could crack, possibly sending metal fragments into the compartment or causing "thermal damage" to the instrument panel", the whole as appears more fully from a copy of the New York Times article entitled "Toyota Orders Big Recall Tied to an Air Bag Part" dated June 11, 2014, produced herein as **Exhibit R-38**;
165. Soon after Toyota's announcement that it was recalling an additional 2.3 million vehicles, the NHTSA reported that it had opened an investigation into other automakers that used parts made by Takata to see if those companies' vehicles should be recalled as well (Exhibit R-38);
166. In Canada, on June 12, 2014, Toyota issued a second recall involving 107,339 vehicles of the following models: 2002-2003 Lexus SC 430, 2003-2004 Toyota Corolla, 2003-2004 Toyota Matrix, 2002-2003 Toyota Sequoia, and 2003-2004 Toyota Tundra, the whole as appears more fully from a copy of the Transport Canada Recall #2014224 dated June 12, 2014, produced herein as **Exhibit R-39**;
167. On June 19, 2014, Ford, Mazda, and Nissan issued recalls for over 135,000 vehicles containing defective Takata airbags. Each of these recalls was necessary because "[u]pon deployment of the passenger side frontal air bag, excessive internal pressure may cause the inflator to rupture. ... In the event of a crash necessitating deployment of the passenger frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the vehicle occupants." More specifically:
  - (a) Recall No. 14V-343 involved 58,669 Ford vehicles, and involved the following models: 2005-2007 Ford Mustang, 2005-2006 Ford GT, and 2004 Ford Ranger, and
  - (b) Recall No. 14V-344 involved 46,673 Mazda vehicles, and involved the following models: 2003-2007 Mazda6, 2006-2007 Mazdaspeed6, 2004-2005 Mazda MPV, 2004-2008 Mazda RX-8, and 2004 Mazda B-Series Truck, and



- (c) Recall No. 14V-701 involved 29,998 Nissan vehicles, and involved the following models: 2003-2004 Nissan Pathfinder, 2004 Nissan Sentra, 2003-2005 Infiniti FX35, 2003-2005 Infiniti FX45, and 2003-2004 Infiniti I35,

The whole as appears more fully from a copy of two (2) NHTSA Recalls dated June 19, 2014, produced herein *en l'asse* as **Exhibit R-40**;

168. No such recall was issued in Canada;
169. On June 20, 2014, Honda issued additional Recalls for a total of nearly 4.5 million Honda and Acura vehicles that contained defective Takata-manufactured airbags:
- (a) Recall No. 14V-349 involved 988,440 Honda vehicles, and involved the following models: 2002-2003 Honda Civic, 2002-2003 Honda CR-V, 2002-2003 Honda Odyssey, 2003 Honda Accord, 2003 Honda Element, 2003 Honda Pilot, and 2003 Acura MDX. The recall was necessary “to address a safety defect in the passenger side frontal air bag which may produce excessive internal pressure causing the inflator to rupture upon deployment of the air bag. ... In the event of a crash necessitating deployment of the passenger’s frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the passenger seat occupant or other occupants”,
- (b) Recall No. 14V-351 involved 2,803,214 Honda vehicles, and involved the following models: 2001-2007 Honda Accord, 2001-2005 Honda Civic, 2002-2006 Honda CR-V, 2003-2011 Honda Element, 2002-2004 Honda Odyssey, 2003-2007 Honda Pilot, 2006 Honda Ridgeline, 2003-2006 Acura MDX, 2002-2003 Acura TL, and 2003 Acura CL. This recall was necessary because “[u]pon deployment of the passenger side frontal air bag, excessive internal pressure may cause the inflator to rupture. ... In the event of a crash necessitating deployment of the passenger side frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the vehicle occupants”, and
- (c) Recall No. 14V-353 involved 698,288 Honda vehicles, and involved the following models: 2003-2005 Honda Accord, 2003-2005 Honda Civic, 2003-2005 Honda CR-V, 2003-2005 Honda Pilot, 2003-2004 Honda Odyssey, 2003-2004 Honda Element, 2006 Honda Ridgeline, 2003-2005 Acura MDX, and 2005 Acura RL. This recall was also necessary because “[u]pon deployment of the passenger side frontal air bag, excessive internal pressure may cause the inflator to rupture. ... In the event of a crash necessitating deployment of the passenger side frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the vehicle occupants”,



The whole as appears more fully from a copy of the three (3) NHTSA Recalls dated June 20, 2014, produced herein *en l'asse* as **Exhibit R-41**;

170. In Canada, Honda issued a recall involving 168,968 vehicles of the following models: 2002-2003 Acura, EL, 2003 Acura MDX, 2003 Honda Accord, 2002-2003 Honda Civic, 2002-2003 Honda CR-V, 2003 Honda Element, 2002-2003 Honda Odyssey, and 2003 Honda Pilot, the whole as appears more fully from a copy of the Transport Canada Recall #2014242 dated June 20, 2014, produced herein as **Exhibit R-42**;

171. Also on June 20, 2014, Chrysler, Toyota and BMW issued recalls for over 382,000 vehicles containing defective Takata airbags. Each of these recalls was necessary because “[u]pon deployment of the passenger side frontal air bag, excessive internal pressure may cause the inflator to rupture. ... In the event of a crash necessitating deployment of the passenger side frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the vehicle occupants.” Specifically:

(a) Recall No. 14V-354 involved 371,309 Chrysler vehicles, and involved the following models: 2003-2008 Dodge Ram 1500, 2005-2008 Dodge Ram 2500, 2006-2008 Dodge Ram 3500, 2008 Dodge Ram 4500, 2008 Dodge Ram 5500, 2004-2008 Dodge Durango, 2005-2008 Dodge Dakota, 2007-2008 Chrysler Aspen, and 2005-2008 Chrysler 300,

(b) Recall No. 14V-350 involved an undisclosed number of Toyota vehicles, and involved the following models: 2003-2005 Toyota Corolla, 2003-2005 Toyota Corolla Matrix, 2003-2005 Toyota Sequoia, 2003-2005 Toyota Tundra, and 2003-2005 Lexus SC430 (as well as for GM’s 2003-2005 Pontiac Vibe, which was made on the same manufacturing line as one of Toyota’s models), and

(c) Recall No. 14V-348 involved approximately 11,600 BMW vehicles, and involved the following models: 2004-2006 BMW 3 Series and 2004-2006 BMW M3,

The whole as appears more fully from a copy of two (2) NHTSA Recalls dated June 20, 2014, produced herein *en l'asse* as **Exhibit R-43**;

172. On June 23, 2014, Mazda issued a third recall (its second in five days) for vehicles containing defective Takata airbags. Recall No. 14V-362 involved 18,050 Mazda vehicles, and involved the 2003-2004 Mazda6 and 2004 Mazda RX-8 models. The recall was necessary “to address a safety defect in the passenger side frontal air bag which may produce excessive internal pressure causing the inflator to rupture upon deployment of the air bag. ... In the event of a crash necessitating deployment of the passenger’s frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the passenger seat occupant or other occupants”, the whole as appears more fully



from a copy of the NHTSA Recall dated June 23, 2014, produced herein as **Exhibit R-44**;

173. In Canada, on June 23, 2014, Mazda issued a second recall involving 1,111 vehicles of the following models: 2004 Mazda6 and 2004 Mazda RX-8, the whole as appears more fully from a copy of the Transport Canada Recall #2014245 dated June 23, 2014, produced herein as **Exhibit R-45**;

174. On June 24, 2014 – just five (5) days after its previous recall of vehicles – Nissan issued a third recall for vehicles containing defective Takata airbags. Recall No. 14V-361 involved 226,326 Nissan vehicles, and involved the following models: 2002-2003 Nissan Maxima, 2002-2003 Nissan Pathfinder, 2002-2004 Nissan Sentra, 2002-2003 Infiniti I35, 2002-2003 Infiniti QX4, 2003 Infiniti FX35, and 2003 Infiniti FX45. The recall was necessary “to address a safety defect in the passenger side frontal air bag which may produce excessive internal pressure causing the inflator to rupture upon deployment of the air bag. ... In the event of a crash necessitating deployment of the passenger’s frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the passenger seat occupant or other occupants”, the whole as appears more fully from a copy of the NHTSA Recall dated June 24, 2014, produced herein as **Exhibit R-46**;

175. On June 25, 2014, GMC ordered its dealers to stop selling the 2013 and 2014 models of its Chevrolet Cruze sedan “because of a problem with air bags made by the Japanese supplier Takata, whose products are already the subject of a large recall of other vehicles.” GMC stated that “about 33,000 Cruzes may have a faulty driver’s side air bag inflator – the potential result of the wrong part being used” the whole as appears more fully from a copy of the New York Times article entitled “G.M. Halts Sale of Cruze Sedan Over Takata Air Bags” dated June 25, 2014, produced herein as **Exhibit R-47**;

176. The following day, on June 26, 2014, GMC issued a recall for vehicles containing defective Takata airbags. Recall No. 14V-372 involved 29,019 of GM’s 2013-2014 Chevrolet Cruze models, and stated:

In the affected vehicles, the driver’s front air bag inflator may have been manufactured with an incorrect part. ... In the event of a crash necessitating deployment of the driver’s air bag, the air bag’s inflator may rupture and the air bag may not inflate. The rupture could cause metal fragments to strike and potentially seriously injure the vehicle occupants. Additionally, if the air bag does not inflate, the driver is at an increased risk of injury,

The whole as appears more fully from a copy of the NHTSA Recall dated June 26, 2014, produced herein as **Exhibit R-48**;



177. By the end June 2014, the number of vehicles that had been recalled due to defective Takata-manufactured airbags had increased to over 6 million. However, automakers, including the Honda Respondents, had still not yet recalled all of the vehicles containing Takata-manufactured airbags;
178. On July 2, 2014, Subaru announced that it would recall “about 8,500 Legacy, Outback and Baja cars from the 2003-4 model years because they are equipped with defective Takata air bag inflators.” Recall 14V-399 was issued for 8,557 Subaru vehicles (for the Legacy, Outback and Baja models detailed above, as well as for the 2004 Subaru Impreza model) because “[u]pon deployment of the passenger side frontal air bag, excessive internal pressure may cause the inflator to rupture. ... In the event of a crash necessitating deployment of the passenger side frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the vehicle occupants”, the whole as appears more fully from a copy of the New York Times article entitled “Subaru to Recall Vehicles With Takata Air Bag Inflators” dated July 2, 2014 and from a copy of the NHTSA Recall dated July 7, 2014, produced herein *en liasse* as **Exhibit R-49**;
179. In Canada, on July 4, 2014, Subaru issued a recall involving 1,112 vehicles of the following models: 2003 Subaru Baja, 2004 Subaru Impreza, 2004 Subaru Impreza WRX / STI, 2003-2004 Subaru Legacy, and 2003-2004 Subaru Outback, the whole as appears more fully from a copy of the Transport Canada Recall #2014285 dated July 4, 2014, produced herein as **Exhibit R-50**;
180. On July 8, 2014, Honda expanded a “two million vehicle air bag recall by as many as one million more vehicles in California” due to the fact that “[a] defective inflator could explode in a crash, sending shards of its metal casing into the passenger compartment. The inflator was made by Takata Corporation, which has said the propellant inside the inflator was not properly prepared and was too powerful”. The vehicles affected by this recall included the following models: 2001-2007 Honda Accord, 2001-2005 Honda Civic, 2002-2006 Honda CR-V, 2003-2011 Honda Element, 2002-2004 Honda Odyssey, 2003-2007 Honda Pilot, 2006 Honda Ridgeline, 2003-2006 Acura MDX, 2002-2003 Acura TL, and 2002-2003 Acura CL, the whole as appears more fully from a copy of the New York Times article entitled “Honda Expands Takata Air Bag Inflator Recall” dated July 8, 2014, produced herein as **Exhibit R-51**;
181. On July 11, 2014, Mitsubishi issued a limited recall for vehicles containing defective Takata airbags. Recall No. 14V-421 involved 11,985 of Mitsubishi 2004-2005 Lancer models;
182. On July 16, 2014, BMW issued a third recall for vehicles containing defective Takata airbags. This recall added an additional “1.6 million [BMW] 3 Series cars from the 2000-2006 model years, including about 574,000 in the United States, over a concern that the front-seat passenger could be injured by metal shards from a deploying air bag in a crash.” Recall No. 14V-428 involved the 2000-2006



BMW 3 Series and 2001-2006 BMW M3 models. The recall was necessary “to address a safety defect in the passenger side frontal air bag which may produce excessive internal pressure that could cause the air bag inflator to rupture upon deployment of the air bag. ... In the event of a crash necessitating deployment of the passenger’s frontal air bag, excessive internal pressure could cause rupturing of the inflator resulting in metal fragments striking and potentially seriously injuring the passenger seat occupant or other occupants, the whole as appears more fully from a copy of the New York Times article entitled “BMW Recalls 1.6 Million Cars Over Defective Takata Air Bag Part” dated July 16, 2014 and from a copy of the NHTSA Recall dated July 16, 2014, produced herein *en liasse* as **Exhibit R-52**;

183. In Canada, BMW issued its first recall involving 40,915 vehicles of the 2000-2006 BMW 3 Series, the whole as appears more fully from a copy of the Transport Canada Recall #2014299 dated July 16, 2014, produced herein as **Exhibit R-53**;

184. On August 1, 2014, Subaru issued a limited second recall for vehicles containing defective Takata airbags. Recall No. 14V-471 involved 8,959 Subaru vehicles, and involved the following models: 2003-2005 Subaru Legacy, 2003-2005 Subaru Outback, 2003-2005 Subaru Baja, and 2004-2005 Subaru Impreza. The recall was necessary because “[u]pon deployment of the passenger side frontal air bag, excessive internal pressure may cause the inflator to rupture. ... In the event of a crash necessitating deployment of the passenger side frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the vehicle occupants”, the whole as appears more fully from a copy of the NHTSA Recall dated August 1, 2014, produced herein as **Exhibit R-54**;

185. On August 18, 2014, the NHTSA had reportedly “deepened” its investigation of Honda’s airbags. The article further reported that “[f]ederal regulators have intensified an investigation into the inadvertent deployment of side air bags on 2008 Honda Accords,” as they were “concerned that the side air bags along the outer edges of the ceiling and the seats may deploy when a door is slammed”, the whole as appears more fully from a copy of the New York Times article entitled ““N.H.T.S.A. Deepens Investigation of Honda Accord Air Bags” dated August 18, 2014, produced herein as **Exhibit R-55**;

186. In August 2014, Honda issued yet another recall of Honda and Acura vehicles, “its ninth for the defect – bringing to six million the total of recalled Honda and Acura vehicles” (Exhibit R-16);

187. On October 2, 2014, a Florida resident “died four days after she crashed her 2001 Honda Accord and was pierced in the neck by debris from the air bag, police said. Authorities originally believed her wounds were caused by an assault, the whole as appears more fully from a copy of the Wall Street Journal article entitled “Air Bag Recalls Trigger New Scrutiny” dated October 22, 2014, produced herein as **Exhibit R-56**;



188. As the New York Times reported (Exhibit R-25):

Hien Tran lay dying in intensive care this month after a car accident, as detectives searched for clues about the apparent stab wounds in her neck.

An unlikely breakthrough arrived in the mail a week after she died from her injuries. It was a letter from Honda urging her to get her red Accord fixed, because of faulty airbags that could explode.

“The airbag,” said Tina Tran, the victim’s twin sister. “They said it was the airbag.”

Ms. Tran became at least the third death associated with the mushrooming recalls of vehicles containing defective airbags made by Takata, a Japanese auto supplier. More than 14 million vehicles from 11 automakers that contain the airbags have been recalled worldwide.

When Ms. Tran crashed her car, the airbag, instead of protecting her, appeared to have exploded and sent shrapnel flying into her neck, the Orange County sheriff’s office said;

189. On October 20, 2014, Mitsubishi issued a “safety notice” for a limited number of 2004-2005 Mitsubishi Lancer owners located in certain geographic areas of the country. The safety notice stated that “[c]ontinued exposure to high levels of humidity may cause the passenger air bag inflator housing to rupture if the vehicle is involved in a crash where the front passenger air bag is designed to deploy. If this occurs, it may increase the risk of injury to the front seat occupants.” The safety notice also instructed vehicle owners that to “reduce the risk of injury, do not allow occupants to sit in the front passenger seat until [the airbag] replacement is performed”, the whole as appears more fully from a copy of the Safety Notice posted on Respondent Mitsubishi’s website at [www.mitsubishicars.com/recall](http://www.mitsubishicars.com/recall), produced herein as **Exhibit R-57**;

190. Also on October 20, 2014, Toyota announced that it planned to conduct a “supplemental safety recall of approximately 247,000 Corollas, Matrixs, Sequoias, Tundras, and Lexus SC vehicles produced from 2001 to 2004 and equipped with front passenger airbag inflators supplied by Takata Corporation.” Those vehicles were recalled because they “have an air bag that can rupture and send shrapnel into the passenger compartment, an expansion of an earlier recall that affected other models using the safety device built by supplier Takata Corp.” Recall No. 14V-655, Toyota’s fourth recall for vehicles containing defective Takata airbags, involved the following models: 2003-2005 Toyota Corolla, 2003-2005 Toyota Corolla Matrix, 2003-2005 Toyota Tundra, 2002-2005 Toyota Sequoia, and 2002-2005 Lexus SC (as well as for GM’s 2003-2005 Pontiac Vibe, which was made on



the same manufacturing line as one of Toyota's models). The recall notice stated that "[i]n the event of a crash necessitating deployment of the front passenger's frontal air bag, the inflator could rupture with metal fragments striking and potentially seriously injuring the passenger seat occupant or other occupants", the whole as appears more fully from a copy of the News Release posted on Respondent Toyota's website entitled "Toyota Intensifies Effort to Repair Vehicles Equipped with Takata Airbag Inflators" dated October 20, 2014, from a copy of the Wall Street Journal article entitled "Toyota Recalls 247,000 Vehicles Because Air Bags May Rupture" dated October 20, 2014, and from a copy of the NHTSA Recall dated October 20, 2014, produced herein *en liasse* as **Exhibit R-58**;

191. On October 22, 2014, the NHTSA expanded the list of vehicles affected by the recall of defective Takata components to cover ten automakers and numerous car models, totaling nearly 8 million vehicles. Those automakers are the Vehicle Manufacturer Respondents, namely, BMW (627,615 potentially affected vehicles), Chrysler (371,309 potentially affected vehicles), Ford (58,669 potentially affected vehicles), GMC (undetermined number of potentially affected vehicles), Honda (5,051,364 potentially affected vehicles), Mazda (64,872 potentially affected vehicles), Mitsubishi (11,985 potentially affected vehicles), Nissan (694,626 potentially affected vehicles), Subaru (17,516 potentially affected vehicles) and Toyota (877,000 potentially affected vehicles), the whole as appears more fully from a copy of the Reuters article entitled "U.S. regulators expand number of vehicles affected by Takata recalls" dated October 22, 2014, produced herein as **Exhibit R-59**;

192. On October 23, 2014, Nissan "expanded its recall of cars equipped with potentially defective air bags from Takata" for an additional 260,000 vehicles worldwide, the whole as appears more fully from a copy of the Wall Street Journal article entitled "Nissan Adds 260,000 Cars to Recall" dated October 23, 2014, produced herein as **Exhibit R-60**;

193. The following day, on October 24, 2014, Nissan issued yet another limited recall – its fourth – for vehicles containing defective Takata airbags. Recall No. 14V-668 involved 1,848 Nissan Vehicles, and included the 2013 Infiniti QX56 and 2014 Infiniti QX80 models. The recall was necessary because "the driver's frontal air bag inflator may have been manufactured with an incorrect part. ... In the event of a crash necessitating deployment of the driver's air bag, the incorrect part may block the flow of propellant to the air bag and the air bag's inflator may rupture. The rupture could cause metal fragments to strike and potentially seriously injure the vehicle occupants", the whole as appears more fully from a copy of the NHTSA Recall dated October 24, 2014, produced herein as **Exhibit R-61**;

194. On November 13, 2014, Honda revealed that a pregnant driver was killed in Malaysia, as well as her unborn child/fetus, after being hit by shrapnel from a Takata airbag. Honda explained away the accident as "driver's SRS air-bag was deployed abnormally and the inflator case was broken", the whole as appears



more fully from a copy of the New York Times article entitled “New Recall by Honda After Death in Malaysia Is Tied to Takata Airbag” dated November 13, 2014 and from a copy of the Reuters article entitled “Honda discloses fifth Takata air bag-linked fatality, widens recall” dated November 13, 2014, produced herein *en liasse* as **Exhibit R-62**;

195. Despite this shocking record, both Takata and the Vehicle Manufacturer Respondents have been slow to report the full extent of the danger to drivers and passengers and failed to issue appropriate recalls. Both the Vehicle Manufacturer Respondents and the Takata Respondents provided contradictory and inconsistent explanations to regulators for the defects in Takata’s airbags, leading to more unnecessary confusion and delay. Indeed, the danger of exploding airbags and the number of vehicles affected was not disclosed for years after it became apparent that there was a potentially and actually lethal problem. Instead, Takata and the Vehicle Manufacturer Respondents repeatedly failed to fully investigate the problem and to issue proper and timely recalls, allowing the problem to proliferate and to cause numerous injuries (at least 139) and at least five (5) deaths over the last thirteen (13) years;

196. The full scope of the defects has yet to be determined. More information about Takata’s defective airbags continues to be uncovered today;

**(v) United States Federal Investigations**

197. Given the serious nature of the issue, on October 22, 2014, the NHTSA issued a press release urging affected individuals to “act immediately,” and that “[r]esponding to these recalls, whether old or new, is essential to personal safety”, the whole as appears more fully from a copy of the NHTSA Press Release entitled “Consumer Advisory: Vehicle Owners with Defective Airbags Urged to Take Immediate Action” dated October 22, 2014 and from a copy of the Reuters article entitled “U.S. regulator to Takata: Give us faulty air-bag documents” dated October 30, 2014, produced herein *en liasse* as **Exhibit R-63**;

198. On October 29, 2014, the NHTSA’s Deputy Administrator sent a letter to Takata in follow-up to NHTSA’s “ongoing investigation into defective Takata air bags, and to express a number of serious concerns that must be resolved to ensure public safety.” The NHTSA’s letter further stated:

Takata has supplied tens of millions of air bag inflators to various vehicle manufacturers over the last fifteen years that, when functioning as designed, save lives and reduce or prevent serious injuries in crashes. However, as you are well aware based on months of discussions your technical experts have had with my staff, millions of Takata inflators are being recalled because, when activated, a growing number are creating an unacceptable risk of deaths and injuries by projecting metal fragments into vehicle occupants rather than properly



inflating the attached air bag. Further action by Takata is required to better understand the failures and further mitigate the safety risk.

Actual and potential inflator failures have led to a large number of recalls in the last eighteen months. General Motors, Ford, Chrysler, Toyota, Nissan, Honda, Subaru, Mitsubishi, BMW, and Mazda have all initiated recall campaigns to address the serious safety risks posed by inflator failures. These recalls encompass a population of millions of vehicles. I am deeply troubled by this situation because of the potential risk for death and injury as well as the erosion of public confidence in a proven life-saving technology.

The whole as appears more fully from a copy of the NHTSA letter to Takata dated October 29, 2014, produced herein as **Exhibit R-64**;

199. Also on October 29, 2014, NHTSA sent a letter to the ten Vehicle Manufacturer Respondents. The letter stated that “[t]he ongoing cooperation of all manufacturers who have recalled vehicles is essential to address this safety risk,” and that the “NHTSA team is engaged with you in critical work to better understand the failures and take action to remedy the safety risk.” NHTSA’s letter also asked the automakers to provide NHTSA with information as to their recall process, urged a faster response from them, and stated that “more can and should be done as soon as possible to prevent any further tragedies”, the whole as appears more fully from a copy of the NHTSA letter to Honda Motor dated October 29, 2014, produced herein as **Exhibit R-65**;
200. 191. On October 30, 2014, the NHTSA “ordered the airbag supplier Takata to turn over documents and answer questions under oath related to defective airbag inflators.” The order “demanded that Takata turn over records related to the production, testing and subsequent concerns raised internally and by automakers over the airbags, as well as communications between the company and automakers about defect concerns”, the whole as appears more fully from a copy of the New York Times article entitled “Takata, Supplier of Defective Airbags, Ordered to Submit Records” dated October 30, 2014, produced herein as **Exhibit R-66**;
201. Also on October 30, 2014, the NHTSA’s Office of Defects Investigation (“ODI”) published an ODI Resume for Investigation. That document stated that NHTSA had opened an investigation “in order to investigate the extent and scope of Honda’s reporting failures, as well as the reason(s) for such failures and the steps being taken by Honda to assure full compliance with TREAD reporting requirements.” The document further stated:

NHTSA has received information indicating that American Honda Motor Co. (Honda) failed to report incidents involving Takata airbags,



which resulted in a death or injury, and for which claims were asserted against Honda.

The TREAD Act requires, among other things, that all manufacturers of 5,000 or more light vehicles submit to NHTSA, on a quarterly basis, Early Warning Reports (EWRs) that include information on each and every incident involving death or injury, identified in a claim against the manufacturer or a notice received by the manufacturer alleging or proving that the death or injury was caused by a possible defect. Manufacturers must submit EWRs to NHTSA no later than 60 days after the last day of each calendar quarter.

NHTSA is also concerned that Honda's reporting failures go beyond the Takata incidents described above, and NHTSA has received information from Honda indicating that Honda may have failed to meet its TREAD reporting obligations, including reporting other death or injury incidents.

The whole as appears more fully from a copy of the NHTSA ODI Resume dated October 30, 2014, produced herein as **Exhibit R-67**;

202. On November 3, 2014, the NHTSA issued a Special Order – separate from the October 30, 2014 investigation (Exhibit R-54) – demanding documents from Honda regarding airbags. As reported by the Detroit Free Press: “The nation’s top auto safety regulator has demanded Honda to show by Nov. 24 what and when it knew about deaths and injuries caused by exploding air bags made by Takata, a supplier at the center of an expanding recall.” A second article reported on the Special Order as follows:

The National Highway Traffic Safety Administration said today it wants Honda to produce even more documents and data than it asked for earlier this week related to the recall of millions of air bags.

NHTSA issued a 15-page special order Wednesday asking the Japanese automaker to produce all documents and communications it has had with air bag supplier Takata about its air bag inflators and recalls of vehicles equipped with the faulty inflators. ...

“We are compelling Honda to produce documents and answer questions under oath relevant to our ongoing investigation into defective air bags made by Takata,” David Friedman, NHTSA’s deputy administrator, said in a statement today. “We expect Honda’s full cooperation as we work to keep the American public safe.”

Today’s action is on top of an investigation launched earlier this week by NHTSA asking Honda to show by Nov. 24 what and when it knew about deaths and injuries caused by exploding air bags made by



Takata. That investigation is focused on whether Honda reported information about accidents related to the recalls in a timely manner,

The whole as appears more fully from a copy of the Detroit Free Press article entitled “NHTSA Demands Honda Documents on Air Bags” dated November 5, 2014 and from a copy of the Detroit Free Press article entitled “NHTSA Issues 2nd Order for Honda Recall Documents” dated November 5, 2014, produced herein *en liasse* as **Exhibit R-68**;

203. On November 18, 2014, the NHTSA requested the Vehicle Manufacturer Respondents to nationally expand the recall and, as part of its ongoing investigation into the defect and the scope of the recalls, has issued a “General Order” to Takata and to all ten (10) of the Vehicle Manufacturer Respondents that use Takata airbag inflators to provide information as to as to what testing and additional steps they have done and plan to do to control and mitigate the risk. In addition, the NHTSA has also issued a second “Special Order” to Takata to compel it to provide documents and detailed information on the propellant used in the airbag inflators, the whole as appears more fully from a copy of the NHTSA Press Release entitled “USDOT Calls for National Recall of Defective Takata Driver Side Air Bags” dated November 18, 2014, from a copy of the General Order dated November 18, 2014, and from a copy of the Special Order dated November 18, 2014, produced herein *en liasse* as **Exhibit R-69**;
204. On November 20, 2014, the United States Senate Commerce, Science, and Transportation Committee held a hearing on the airbag defects. The Committee members were vocal in demanding that Takata and the Vehicle Manufacturer Respondents take appropriate and timely action in order to protect the driving public. One senator astutely stated, “[w]e now have a new problem that we are addressing, which is in effect a live hand grenade in front of a driver and a passenger” and another senator stated “[e]very single one of these Takata air bags could be a ticking time bomb”, the whole as appears more fully from a copy of the Reuters article entitled “Takata executive warns about ability to fix deadly air bag flaw”, dated November 20, 2014 and from a copy of the Daily Nation article entitled “Takata exec due back in hot seat over faulty airbags” dated November 26, 2014, produced herein *en liasse* as **Exhibit R-70**;
205. At the hearing, Takata’s representative, Vice-President Hiroshi Shimizu, continuously testified that the known airbag incidents were “anomalies,” while admitting the existence of manufacturing and design defects. Takata testified that the “root causes” for the airbag failures include: (1) age of the unit, (2) persistent exposure over time to conditions of high absolute humidity, and (3) potential production issues, the whole as appears more fully from a copy of the testimony of Hiroshi Shimizu at the hearing entitled “Examining Takata Airbag Defects and the Vehicle Recall Process” dated November 20, 2014, produced herein as **Exhibit R-71**;



206. Notably, three (3) of the Takata related airbag deaths, occurred outside of the “regional recall” areas, which did not correspond to the “absolute humidity<sup>4</sup>” criteria theory espoused by the Respondents. These areas included the United States of Oklahoma, Virginia, and California. In any case, given the reality of mobility of drivers, the humidity theory “suspends logic and common sense” and the notion of a “selective geographic recall is absolutely irresponsible and reprehensible when people living in other states may be equally at risk”, the whole as appears more fully from a copy of the NBC News article entitled “Critics Take Aim at ‘Geographic Recalls’ Amid Air Bag Defects” dated November 2, 2014, produced herein as **Exhibit R-72**;

207. On December 3, 2014, Takata refused to expand its recalls beyond the high-humidity areas, where four (4) motorists have died. The NHTSA is reviewing its next steps toward forcing a recall, which include a public hearing and a review of the record as the agency builds a solid legal case that will hold up in court, which could take several weeks or even months, the whole as appears more fully from a copy of the Japan Times article entitled “Takata snub of recall request not backed by data, NHTSA says” dated December 3, 2014 and from a copy of the Associated Press article entitled “Air Bag Maker Balks at Coast-to-Coast Recall” dated December 3, 2014, produced herein *en liasse* as **Exhibit R-73**;

**(vi) Takata Fails to Meet Safety Standards and Maintain Airbag Quality**

208. As recently as 2011, supervisors at Takata’s Monclova plant were reporting potentially lethal defects in the manufacturing process. Based on internal Takata documents, Takata was unable to meet its own standards for safety up until at least 2011, the whole as appears more fully from a copy of the Reuters article entitled “Exclusive: Takata engineers struggled to maintain air bag quality, documents reveal” dated October 17, 2014, produced herein as **Exhibit R-74**;

209. In March 2011, a Takata supervisor at the Monclova plant sent an e-mail to other employees stating “A part that is not welded = one life less, which shows we are not fulfilling the mission” (Exhibit R-74);

210. Despite all the theories proposed by Takata to federal regulators as to the sources of the defects, according to documents reviewed by Reuters, Takata also cited rust, bad welds, and even chewing gum dropped into at least one inflator as reasons for the defects. The same documents show that in 2002, Takata’s plant in Mexico allowed a defect rate that was “six to eight times above” acceptable limits, or roughly 60 to 80 defective parts for every 1 million airbag inflators shipped;

**(vii) The Defective Vehicles Containing Takata-Manufactured Airbags Were Sold as “Safe” and “Reliable”**

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<sup>4</sup> Absolute humidity is a measure of the amount of water vapour in a specific sample of air.



211. In advertisements and promotional materials, the Vehicle Manufacturer Respondents maintained that their vehicles were safe and reliable;
212. By way of example, the Honda Respondents maintained:
- (a) Acura: “Acura believes driving a luxury car should be a highly enjoyable experience. And while we tend to dwell on the more exhilarating aspects of our vehicles, we consider your safety a top priority. ... Safety has been top of mind with Acura engineers since day one. ... Over the years, we’ve added many advanced safety technologies to the list, and the vast majority of them are now standard on every model”, and
  - (b) Honda: “Honda is committed to providing safety for everyone—that means crash protection not only for our own drivers and passengers, but also for the occupants of other vehicles, and injury mitigation for pedestrians.” “As a leader, Honda looks beyond government regulations, studying real world situations to develop new safety technologies for everyone.”

The whole as appears more fully from copies of two (2) extracts from Respondent Honda’s websites [www.acura.com](http://www.acura.com) and from [www.corporate.honda.com](http://www.corporate.honda.com), produced herein *en liasse* as **Exhibit R-75**;

213. Purchasers and/or lessees of the Defective Vehicles were thus were led to believe their vehicles were safe and reliable vehicles;
214. However, as detailed above, millions of vehicles that contained defective Takata-manufactured airbags were sold by the Vehicle Manufacturer Respondents and other automakers;
215. Vehicles with defective airbag systems are not “safe” and “reliable” as the Defective Vehicles were advertised and promoted to be;
216. As detailed above, additional recalls (or expanded recalls) have been issued after the NHTSA’s list was published on October 22, 2014 (Exhibit R-63), and it is likely that additional vehicle recalls will be announced in the future;
217. In fact, Honda just recently announced, on November 6, 2014, that it would “soon expand its U.S. recalls involving potentially explosive air bags made by Takata Corp., adding a small number of vehicles in certain hot and humid regions and expanding the scope of existing recalls.” In addition, Honda reported that it would “also reclassify some cars that have been part of a regional ‘safety improvement campaign,’ making them part of a more severe regional ‘safety recall’” (Exhibit R-62), the whole as appears more fully from a copy of the Wall Street Journal article entitled “Honda Heightens U.S. Response to Problems With Takata Air Bags” dated November 6, 2014, from a copy of the Wall Street journal article entitled “Honda Plans to Expand Recall of Driver-Side Takata Air Bags” and



from a copy of the Wall Street Journal article entitled “Takata Forms Independent Review Panel On Air-Bag Defects”, both dated December 3, 2014, produced herein as **Exhibit R-76**;

218. Additionally, the NHTSA has also recently urged affected vehicle owners to “check their [Vehicle Identification Number (“VIN”)] periodically as manufacturers continue to add VINs to the [recall] database” (Exhibit R-63);
219. Moreover, Takata recently disclosed that it has failed to keep adequate quality-control records, making it difficult to identify vehicles with potentially defective air bags (Exhibit R-24);

**(viii) Defective Vehicle Owners Are Warned About Their Airbags; Remediation Is Lacking**

220. To date, over 14,000,000 Defective Vehicles have been recalled worldwide and there are reports that additional vehicles that have not yet been disclosed by the Respondents could join the list of recalls. The large majority of those recalls have occurred within the last year despite the fact that many of the vehicles were manufactured with a potentially defective and dangerous airbag over a decade ago;
221. On October 20, 2014, the NHTSA “warned the owners of about 4.7 million vehicles with defective air bags made by the Takata Corporation that they should ‘act immediately’ to have them fixed, the whole as appears more fully from a copy of the New York Times article entitled “Defect in Takata Air Bags Prompts Urgent Warning to Drivers” dated October 20, 2014, produced herein as **Exhibit R-77**;
222. According to NHTSA, as of October 22, 2014, over five (5) million Honda and Acura vehicles are potentially affected by Takata-manufactured airbags; 2.7 million BMW, Chrysler, Ford, GM, Mazda, Mitsubishi, Nissan, Subaru and Toyota vehicles are affected (Exhibit R-62);
223. The New York Times and Globe and Mail articles (Exhibit R-16) detailed the widespread (and worldwide) nature and severity of the defective airbags manufactured by Takata, including the Defective Vehicles:

Today, more than 14 million vehicles have been recalled by 11 automakers over rupture risks involving air bags manufactured by the supplier, Takata. That is about five times the number of vehicles recalled this year by General Motors for its deadly ignition switch defect.

Two deaths and more than 30 injuries have been linked to ruptures in Honda vehicles, and complaints received by regulators about various automakers blame Takata air bags for at least 139 injuries, including



37 people who reported air bags that ruptured or spewed shrapnel or chemicals;

224. With the Vehicle Manufacturer Respondents currently controlling the scope of airbag-related recalls and the means of communication, an underlying problem is a lack of uniformity, which has led to confusion among consumers. For example, certain Vehicle Manufacturer Respondents have recalled certain Defective Vehicle and not others (Exhibit R-1). While Honda, Toyota, Subaru, Ford, BMW, and Mitsubishi have issued recalls on certain vehicles in Canada, Nissan, Mazda, Chrysler, GMC and Mitsubishi have yet to do so. In addition, even the Respondents who have issued recalls have not included as broad a scope as they have in the U.S., leaving Canadians at a great risk of injury and/or death;
225. Even within the U.S. there is a lack of uniformity in the recall process. High humidity states have been included by all of the Vehicle Manufacturer Respondents; however, a number of injuries and deaths have occurred in non-humid states. Further, Honda has agreed to expand its scope nationally; however, it has indicated that it will not send notices to those vehicle owners outside of its existing scope and will merely rely on its customers to learn about the problem on their own, the whole as appears more fully from a copy of the New York Times article entitled “Honda to Replace Airbags Throughout U.S.” dated November 18, 2014, produced herein as **Exhibit R-78**;
226. Additionally, the industry has focused mainly on driver side airbags, even with evidence of at least one death from an exploding passenger side airbag. Given the serious danger related to the Takata airbag defects, immediate action must be taken to ensure uniformity as to the scope of the recall of both driver and passenger side airbags to protect the public;
227. Worse still, the current recalls have done little to protect owners and lessees of the Defective Vehicles from the urgent and ongoing threat posed by Takata airbags because there are not enough new airbags to replace the millions of recalled airbags;
228. Takata is unable to manufacture enough new, safe airbags quickly enough to replace the faulty airbags in the nearly eight million vehicles that are the subject of the most recent recall. “There’s simply not enough parts to repair every recalled single car immediately,” said Chris Martin, a spokesman for Honda... “Drivers could wait for weeks or longer to receive notices” (Exhibit R-25);
229. Authorized dealers are experiencing a severe shortage of parts to replace the faulty airbags. Dealers have been telling frustrated car owners to expect to wait many months before their airbags can be replaced, the whole as appears more fully from a copy of Reuters article entitled “Faulty Takata Air Bags May Not Be Replaced For Months” dated October 29, 2014, produced herein as **Exhibit R-79**;



230. Instead of replacing the airbags, some dealers are either disabling airbags and leaving customers with vehicles that are unsafe to drive, or are advising customers to not drive vehicles with Takata airbags until the airbags can be replaced (Exhibit R-56);
231. In response to the airbag replacement shortage, Toyota has taken the extreme step of disabling passenger airbags entirely and putting a “Do Not Sit Here” decal in the vehicle until proper repairs can be made. Toyota has stated that “[i]f a replacement part is temporarily unavailable at the time of repair, we view disabling the front passenger airbag as a temporary measure that prioritizes customer safety. We also advise that customers not occupy the front passenger seat until the replacement inflator is installed and the airbag is fully functional” (Exhibit R-56);
232. In the alternative, Toyota is advising customers to not drive their vehicles with Takata airbags until the airbags can be replaced. Toyota has not explained how drivers who rely on these vehicles for work and school are to cope without means for transportation;
233. Like Toyota, other automakers have also resolved to remedy their customers’ vehicles containing Takata airbags not by providing temporary replacement vehicles or replacement parts, but by disengaging the airbags entirely;
234. In fact, customers are put in potentially dire situations because replacement airbag parts are not available in the quantities demanded by those affected by the millions of recalls. At this time, automakers are not offering customers loaner cars to use until their airbags can be replaced;
235. The Petitioner and Class Members are either left with unsafe vehicles or no vehicle at all. At this time, automakers are not offering customers the use of loaner vehicles;
236. Congress is also concerned with this serious problem and has questioned the legality of Toyota’s and other automaker’s responses. Two (2) U.S. Senators, in a letter to the United States Department of Transportation (“USDOT”), expressed that “your office should strongly encourage manufacturers to provide rental cars at no cost to consumers if their cars cannot be fixed immediately because of insufficient replacement parts” and expressed their alarm concerning “a policy recently announced by Toyota and GMC that dealers should disable passenger side airbags and instruct against permitting passengers in the front seat if replacement parts for these airbags are unavailable. As a matter of policy, this step is extraordinarily troubling and potentially dangerous...all drivers deserve access to loaners or rental cars at no cost to them while they await repairs to their cars that make them safe enough to drive again”. They also expressed that the “NHTSA should immediately issue a nation-wide safety recall on all the affected cars, regardless of where the car is registered. NHTSA’s October 21, 2014



Consumer Advisory provided “no factual basis for distinguishing between states or regions of the country regarding the potential severe danger of this defect to motorists”, the whole as appears more fully from a copy of the letter send from Senator Richard Blumenthal and Senator Edward J. Markey to the United States Senate dated October 23, 2014, produced herein as **Exhibit R-80**;

237. As these U.S. Senators have recognized, there is an immediate need to provide safe vehicles for the Petitioner and the Class Members. Otherwise, many may be left without a vehicle to take them to and from work, to be able to pick up their children from school or childcare, or, in the most urgent situations, a vehicle for emergency situations. The Petitioner and the Class Members must also take time away from work and other important obligations to take their Defective Vehicles to the repair shop when replacement parts do become available;

**(ix) The Faulty Airbags and Related Quality Concerns Have Caused and Will Continue to Cause Values of the Defective Vehicles to Plummet**

238. A vehicle purchased or leased under the reasonable assumption that it is “safe” and “reliable” as advertised is worth more than a vehicle known to be subject to the risk of a possibly life-threatening failure of an airbag system. A vehicle purchased or leased under the assumption that it was produced in conformity with high safety standards is worth more than a vehicle produced in a system that promotes expedience over quality and safety and hides known defects. Moreover, vehicle owners and/or lessees have a reasonable expectation that automakers will abide by federal, statutory, and civil law obligations to affirmatively disclose known defects in a timely manner;

239. Unfortunately, this did not happen and, as a result, all purchasers and/or lessees of the Defective Vehicles overpaid for their vehicles at the time of purchase. As news of the dangerous and defective airbag systems, and the Respondents’ quality control issues surfaced in 2014, the value of the Defective Vehicles has diminished and will continue to do so;

240. As detailed above, there has been extensive reporting about the defective airbags in recent months, raising public awareness of their defect and the safety implications;

241. These news reports detailing the utter lack of regard for customers’ safety exhibited by Takata and the Vehicle Manufacturer Respondents, have materially negatively impacted the value of the Defective Vehicles, including the Petitioner’s and Class Members’ vehicles;

242. Takata and the Vehicle Manufacturer Respondents knew or should have known that the Takata airbags installed in millions of vehicles were defective. Both Takata and the Vehicle Manufacturer Respondents, who concealed their

knowledge of the nature and extent of the defects from the public, have shown a blatant disregard for public welfare and safety;

**(x) Summative Remarks**

243. As a result of the defective airbags, owners and lessees of the affected cars have suffered loss of value of their vehicles due to the stigma associated with such horrific injuries and deaths related to the Takata product;

244. As a result of Takata's and the Vehicle Manufacturer Respondents' misconduct, the Petitioner and the Class Members were harmed and suffered actual damages in that the Defective Vehicles have potentially deadly airbags that pose an ongoing threat to drivers and passengers and have drastically diminished the value of the cars in which they are installed;

245. The Petitioner and the Class Members did not receive the benefit of their bargain as purchasers and lessees received vehicles that were of a lesser standard, grade, and quality than represented, and did not receive vehicles that met ordinary and reasonable consumer expectations. Class Members did not receive vehicles that would reliably operate with reasonable safety, and that would not place drivers and occupants in danger of encountering an ongoing and undisclosed risk of harm, which could have been avoided through the exercise of reasonable precaution and forthrightness. A vehicle purchased or leased under the reasonable assumption that it is "safe" as advertised is worth more than a car—such as the Defective Vehicles—that is known to contain a Takata airbag. Therefore, all purchasers and/or lessees of the Defective Vehicles overpaid for their vehicles. Furthermore, the public disclosure of the defective Takata airbags has caused the value of the Defective Vehicles to materially diminish. Purchasers or lessees of the Defective Vehicles paid more, either through a higher purchase price or higher lease payments, than they would have had the defects been disclosed;

246. The Petitioner and the Class Members that she seeks to represent suffered economic damages by purchasing and/or leasing the Defective Vehicles; they did not receive the benefit of the bargain, and are therefore entitled to damages;

247. Canadian customers were never compensated for damages incurred as a result of purchasing and/or leasing the Defective Vehicles containing the Takata airbags;

**II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

248. On or about August 29, 2003, the Petitioner leased a 2003 Honda Civic vehicle containing a Takata airbag from Lallier Honda Montreal at 12435 Laurentien Boulevard, in Montreal, Quebec for a total cost of approximately \$19,356 plus taxes payable in monthly installments of \$250 including taxes, the whole as

appears more fully from a copy of the Lease Agreement dated August 29, 2003, produced herein as **Exhibit R-81**;

249. On September 19, 2007, the Petitioner purchased the Defective Vehicle from Honda Canada Finance Inc. for a buyback cost of \$10,173.46 taxes included, the whole as appears more fully from a copy of the Purchase Agreement dated September 19, 2007, produced herein as **Exhibit R-82**;
250. Recently, while researching online, the Petitioner became aware of the defective nature of the airbag in her Defective Vehicle, which is on the list of vehicles subject to Honda's recall in Canada as well as in the U.S. for vehicles with defective Takata airbags.
251. At the time of sale, the Petitioner was under the impression that she was leasing and subsequently purchasing a Vehicle that was free of any design or manufacturing defects; unbeknownst to her, she overpaid for the purchase price as the Defective Vehicle was in fact suffering from a Design Defect;
252. The Petitioner has not received a vehicle recall letter from Honda as of the date of this Motion; however, Takata recently disclosed that it has failed to keep adequate quality-control records, making it difficult to identify vehicles with potentially defective airbags;
253. Petitioner has recently discovered, while researching online, that several class actions were filed in the United States due to the Design Defect and due to the Respondents' failure to disclose, despite longstanding knowledge of its existence and predisposition to explosion, the whole as appears more fully from a copy of the Class Action Complaints, produced herein, *en liasse*, as **Exhibit R-83**;
254. Petitioner has suffered ascertainable loss as a result of the Respondents' omissions and/or misrepresentations associated with the Design Defect, including, but not limited to, overpayment for the Vehicle itself, substantially lower resale values associated with the Vehicle because the problems with the airbag have become notoriously defective in the industry, pain and suffering, and trouble and inconvenience;
255. Had Petitioner known about the Design Defect, she would not have purchased the Defective Vehicle;
256. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
257. In consequence of the foregoing, the Petitioner is justified in claiming damages;



### **III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

258. Every member of the class has purchased and/or leased a Defective Vehicle containing defective Takata airbags;
259. Each member of the class is justified in claiming at least one or more of the following as damages:
- a. Diminished value of the Defective Vehicles in terms of an overpayment for the purchase price or lease payments,
  - b. Lower resale value of the Defective Vehicles,
  - c. Loss of use of the Defective Vehicles and expenditures for rental vehicles,
  - d. Pain and suffering,
  - e. Trouble and inconvenience, and
  - f. Punitive and/or exemplary damages;
260. All of these damages to the Class Members are a direct and proximate result of the Respondents' conduct;

### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
261. Petitioner is unaware of the specific number of persons who purchased and/or leased the Defective Vehicles, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
262. Class members are numerous and are scattered across the entire province and country;
263. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;

264. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the class;

265. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;

266. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action

267. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the litigation;

268. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;

269. The recourses of the members raise identical, similar or related questions of fact or law, namely:

- a) Do the Defective Vehicles suffer from airbag defects?
- b) Did the Respondents know or should they have known about the airbag defects, and, if yes, how long have the Respondents known of the defects?
- c) Did the Respondents negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell non-defective airbag inflators?
- d) Did the Respondents misrepresent the Defective Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the Vehicles?
- e) Are the Respondents responsible for all related damages (including, but not limited to: the diminished value of the Defective Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Defective Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, paint and suffering, and trouble and inconvenience to class members as a result of the problems associated with the Vehicles and in what amount?



- f) Are the Petitioner and the Class Members entitled to a declaratory judgment stating that the airbag inflators in the Defective Vehicles are defective and/or not merchantable?
- g) Should an injunctive remedy be ordered to force the Respondents to notify, recall, repair and/or replace the defective airbags in Class Members Vehicles, which have not yet been recalled, free of charge?
- h) Are the Respondents responsible to pay punitive damages to class members and in what amount?

270. The interests of justice favour that this motion be granted in accordance with its conclusions;

#### **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

271. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages, injunctive relief, and declaratory judgment;

272. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE that the airbag inflators in the Defective Vehicles are defective and/or not merchantable;

ORDER the Defendants to recall all Defective Vehicles equipped with Takata-manufactured airbags and to repair and/or replace said defect free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;



ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that it be attributed the status of representative of the Class

273. Petitioner is a member of the class;

274. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that she wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with her attorneys;

275. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

276. Petitioner has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

277. Petitioner, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

278. Petitioner is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

279. Petitioner understands the nature of the action;

280. Petitioner's interests are not antagonistic to those of other members of the class;



B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

281. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

282. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

283. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages, injunctive relief, and declaratory relief;

**ASCRIBE** the Petitioner the status of representative of the persons included in the class herein described as:

- 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;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Do the Defective Vehicles suffer from airbag defects?
- b) Did the Respondents know or should they have known about the airbag defects, and, if yes, how long have the Respondents known of the defects?
- c) Did the Respondents negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell non-defective airbag inflators?



- d) Did the Respondents misrepresent the Defective Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the Vehicles?
- e) Are the Respondents responsible for all related damages (including, but not limited to: the diminished value of the Defective Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Defective Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, pain and suffering, and trouble and inconvenience to class members as a result of the problems associated with the Vehicles and in what amount?
- f) Are the Petitioner and the Class Members entitled to a declaratory judgment stating that the airbag inflators in the Defective Vehicles are defective and/or not merchantable?
- g) Should an injunctive remedy be ordered to force the Respondents to notify, recall, repair and/or replace the defective airbags in Class Members Vehicles, which have not yet been recalled, free of charge?
- h) Are the Respondents responsible to pay punitive damages to class members and in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE that the airbag inflators in the Defective Vehicles are defective and/or not merchantable;

ORDER the Defendants to recall all Defective Vehicles equipped with Takata-manufactured airbags and to repair and/or replace said defect free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;



CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**DECLARE** that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE and the GLOBE AND MAIL;

**ORDER** that said notice be available on the Respondents' websites, Facebook pages, and Twitter accounts with a link stating "Notice to Vehicle Owners/Lessees";

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**THE WHOLE** with costs, including all publications fees.

Montreal, December 5, 2014

(S) Jeff Orenstein

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CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein  
Attorneys for the Petitioner