

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No : 500-06-000723-144

DATE : October 2, 2019

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

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**ELENI VITORATOS**

and

**ANDREA FREY**

Petitioners

v.

**TAKATA CORPORATION**

and

**TK HOLDINGS, INC.**

and

**HIGHLAND INDUSTRIES, INC.**

and

**HONDA CANADA INC.**

and

**HONDA MOTOR CO., LTD.**

and

**TOYOTA CANADA INC.**

and

**TOYOTA MOTOR CORPORATION**

and

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

and

**SUBARU CANADA INC.**

and

**FUJI HEAVY INDUSTRIES, LTD.**

and  
**BMW CANADA INC./BMW GROUP CANADA**  
and  
**BMW OF NORTH AMERICAN, LLC**  
and  
**BMW MANUFACTURING CO. LLC**  
and  
**BMW AG**  
and  
**NISSAN CANADA INC.**  
and  
**NISSAN NORTH AMERICA INC.**  
and  
**NISSAN MOTOR CO. LTD.**  
and  
**MAZDA CANADA INC.**  
and  
**MAZDA MOTOR CORPORATION**  
and  
**FORD MOTOR COMPANY OF CANADA LIMITED**  
and  
**FORD MOTOR COMPANY**  
and  
**GENERAL MOTORS OF CANADA LIMITED**  
and  
**GENERAL MOTORS CORPORATION**  
and  
**CHRYSLER CANADA INC.**  
and  
**FCA US LLC**  
and  
**MITSUBISHI CANADA LIMITED**  
and  
**MITSUBISHI INTERNATIONAL CORPORATION**  
Respondents

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JUDGMENT  
(partial discontinuance)

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[1] On December 5, 2014, the Petitioners filed a Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative on behalf of the following group:

“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] Thereafter, the Motion for Authorization was amended 4 times, the most recent Fourth Amended Motion for Authorization having been filed on June 28, 2017.

[3] In this litigation, the Petitioners have alleged, *inter alia*, that the Respondents manufactured, distributed, and/or sold the Subject 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.

[4] It has been further alleged that the Respondents failed to disclose, despite longstanding knowledge, that the Takata airbags are defective and predisposed to violent explosion and that they actively concealed this Design Defect and the fact that its existence would diminish both the intrinsic and the resale value of the Subject Vehicles.

[5] The Petitioners have named 42 entities as Respondents in the litigation; 39 of which consist of the manufacturers of the Subject Vehicles (the “Vehicle Manufacturer Respondents”) and 3 of which are Takata-related entities:

- I. Takata Corporation (“Takata”)
- II. TK Holdings Inc. (“TK Holdings”)
- III. Highland Industries, Inc. (“Highland”)

(the “Takata Respondents”)

[6] Takata is a Japanese corporation and its subsidiary, TK Holdings is an American holding company both of which design, manufacture, test, market, distribute, supply, and sell airbags.

[7] On June 25, 2017, TK Holdings, among others, commenced Chapter 11 proceedings in the United States Bankruptcy Court for the District of Delaware.

[8] Concurrently, albeit on June 26, 2017, Takata, among others, initiated civil rehabilitation proceedings with the 20<sup>th</sup> Department of the Civil Division of the Tokyo District Court under the Civil Rehabilitation Act of Japan.

[9] On June 28, 2017, an Initial Recognition Order and Supplemental Order was issued by the Ontario Superior Court of Justice (Commercial List) pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), recognizing and enforcing, among other things, the US Chapter 11 proceedings and TK Holding's appointment as the foreign representative of the Chapter 11 Debtors and granting a stay of proceedings against the Chapter 11 Debtors.

[10] On September 1, 2017, an order was issued by the Ontario Superior Court of Justice (Commercial List) pursuant to Part IV of the CCAA, amending the Canadian Recognition Orders to extend recognition and the stay of proceedings to Takata and its other related Japanese entity debtors.

[11] On March 14, 2018, an order was issued by the Ontario Superior Court of Justice (Commercial List) recognizing and giving full force and effect in all provinces and territories of Canada to the Order of the United States Bankruptcy Court for the District of Delaware dated February 21, 2018 confirming the Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings and its Affiliated Debtors (the "Chapter 11 Plan").

[12] The Chapter 11 Plan became effective on April 10, 2018.

[13] On May 17, 2018, an order was issued by the Ontario Superior Court of Justice (Commercial List), recognizing and giving full force and effect in all provinces and territories of Canada to the sale approval issued by the 20<sup>th</sup> Department of the Civil Division of the Tokyo District Court on February 26, 2018.

[14] On May 23, 2018, the civil rehabilitation plan of Takata (the "Japanese Plan") was approved by a large majority of creditors (93% by number and 96% by amount) and confirmed by the Japanese Court. The confirmation order became valid and binding on June 15, 2018.

[15] Under the Chapter 11 Plan, all claimants are "permanently enjoined from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting, directly or indirectly, a Debtor [which includes TK Holdings Inc.]...". Furthermore, Takata Corporation was a "Released Party" under the Chapter 11 Plan and "deemed conclusively, absolutely, unconditionally, irrevocably and forever released and discharged, to the maximum extent permitted by law...".

[16] In the Chapter 11 Confirmation Recognition Order, Ontario Superior Court of Justice (Commercial List) ordered that "the compromises, arrangements, releases, discharges and injunctions contained and referenced in, and the sale and transfer of the Purchased Assets to the Plan Sponsor in accordance with the terms described and set

forth in the Confirmation Order and the Chapter 11 Plan are hereby sanctioned, approved, recognized and given full force and effect in all provinces and territories of Canada in accordance with and subject to the terms of the Confirmation Order and the Chapter 11 Plan”.

[17] Given the releases in the Chapter 11 Plan and the Japanese Plan, the Petitioners have determined not to continue to proceed with this litigation as against Takata and TK Holdings – the litigation will continue as against the Vehicle Manufacturer Respondents as well as Highlands Industries, Inc. (who has not been included in the bankruptcy proceedings).

[18] On February 25, 2019, Justice Perell of the Ontario Superior Court of Justice dismissed the Ontario proceedings as against Takata and TK Holdings.

[19] On June 13, 2019, the Petitioners filed an application for a partial discontinuance seeking permission to discontinue the present legal proceedings as against Respondents Takata Corporation and TK Holdings, Inc. under articles 9 al. 2, 19 and 585 C.C.P. and based on the above-summarized situation.

[20] **SEEING** the above-mentioned Application, as well as the Exhibits in support thereof produced in the Court record;

[21] **GIVEN** the consent by the Respondents Takata Corporation and TK Holdings, Inc. to the discontinuance without legal costs;

[22] **CONSIDERING** that the Court finds the partial discontinuance to be in the interest of justice;

**POUR CES MOTIFS, LE TRIBUNAL :**

**WHEREFORE, THE COURT:**

[23] **ACCORDE** la présente demande ;

**GRANTS** the present Application;

[24] **AUTORISE** les demanderessees à se désister de la quatrième demande amendée pour autorisation d'exercer une action collective et d'attribuer le statut de représentant aux demanderessees, uniquement à l'encontre des intimées Takata Corporation et TK Holdings, Inc.;

**AUTHORIZES** the Petitioners to discontinue the Fourth Amended Application to Authorize the Bringing of a Class Action & to Designate the Petitioners as Representatives only as against Respondents Takata Corporation and TK Holdings, Inc.;

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

**THE WHOLE**, without legal costs.



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