

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000723-144

DATE: November 2nd, 2023

BY THE HONOURABLE PIERRE NOLLET, J.S.C.

ELENI VITORATOS

and

ANDREA FREY

Plaintiffs/Class Representatives

v.

TAKATA CORPORATION

and

TK HOLDINGS, INC.

and

HIGHLAND INDUSTRIES, INC.

and

BMW CANADA INC. / BMW GROUP CANADA

and

BMW OF NORTH AMERICA, LLC

and

BMW MANUFACTURING CO., LLC

and

BMW AG

and

NISSAN CANADA INC.

and

NISSAN NORTH AMERICA INC.

and

NISSAN MOTOR CO., LTD.

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 USA LLC
and
MITSUBISHI MOTOR SALES OF CANADA INC.
and
MITSUBISHI MOTORS NORTH AMERICA
and
MITSUBISHI MOTORS CORPORATION
and
DAIMLER AG
and
MERCEDES-BENZ CANADA INC.
and
VOLKSWAGEN GROUP CANADA INC.
and
AUDI CANADA INC.
and
FONDS D'AIDE AUX ACTIONS COLLECTIVES
Defendants

JUDGMENT ON DISCONTINUANCE AGAINST FCA AND CHRYSLER CANADA.

[1] On December 5, 2014, the Plaintiffs/Class Representatives 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] In this litigation, the Plaintiffs/Class Representatives have alleged, *inter alia*, that the Defendants manufactured, distributed, and/or sold the vehicles with airbags which were plagued by serious, pervasive, and dangerous design and manufacturing defects (Defective Vehicles);

[3] It has been further alleged that the Defendants 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 Defective Vehicles;

[4] The Plaintiffs/Class Representatives have named 42 entities as Defendants in the litigation; 39 of which consisted of the manufacturers of the Defective Vehicles (the “Vehicle Manufacturer Defendants”) and 2 of which were FCA and Chrysler related entities.

[5] Similar class proceedings have been ongoing, charging substantially similar allegations in Ontario, consisting of 6 proceedings¹ that have been coordinated pursuant to a consortium agreement with 2 others in Saskatchewan, and in British Columbia²;

[6] The consortium of plaintiffs’ counsel consists of several firms working cooperatively, including McKenzie Lake Lawyers LLP, Consumer Law Group P.C., Strosberg Sasso Sutts LLP, Rochon Genova LLP, Kim Spencer McPhee Barristers P.C., Merchant Law Group LLP, Garcha & Company, and Consumer Law Group Inc.;

[7] Following an agreement between counsel in these proceedings to coordinate and concentrate efforts in one jurisdiction only, being Ontario, on September 26, 2016, Justice Sansfaçon, J.S.C., as he then was, stayed the present class action until the final resolution of the proceedings in Ontario or until such time as the Court decides otherwise³;

[8] To date, this class action has been partially discontinued as against the three Takata entities as follows:

8.1. Takata Corporation and TK Holdings, Inc. by judgment dated October 2, 2019;

8.2. Highland Industries, Inc. by judgment dated June 16, 2022;

¹ *Mailloux v. Takata Corp. et als.*, CV-16-543763-00CP; *Coles v. Takata Corp. et als.*, CV-16-543764-00CP; *D’Haene and Sanford v. Takata Corp. et als.*, CV-16-543766-00CP; *Des-Rosiers and Kominar v. Takata Corp. et als.*, CV-16-543767-00CP; *McIntosh v. Takata Corp. et als.*, CV-16-543833-00CP; and *Hayvren v. Takata Corporation et als.*, CV-15-63216CP.

² In the Court of Queen’s Bench for Saskatchewan – *Hall v. Takata Corporation et al.*, CV QBG.1284 of 2015 and in the British Columbia Supreme Court – *Rai v. Takata Corporation et al.* S148694.

³ *Vitoratos c. Takata Corporation*, 2016 QCCS 4892.

[9] In addition, the following nine vehicle manufacturers have been released from the class action pursuant to four settlements:

- 9.1. Toyota (Toyota Canada Inc., Toyota Motor Corporation, and Toyota Motor Engineering & Manufacturing North America, Inc.), Subaru (Subaru Canada Inc. and Fuji Heavy Industries, Ltd.) and Mazda (Mazda Canada Inc. and Mazda Motor Corporation) by judgment dated March 12, 2020⁴;
- 9.2. Honda (Honda Canada Inc. and Honda Motor Co., Ltd.) by judgment dated January 22, 2021⁵.

[10] The following eight groups of 19 Respondents remain in the file:

- 10.1. BMW (BMW Canada Inc./BMW Group Canada, BMW Of North American, LLC, BMW Manufacturing Co. LLC, and BMW AG);
- 10.2. Nissan (Nissan Canada Inc., Nissan North America Inc., and Nissan Motor Co. Ltd.);
- 10.3. Ford (Ford Motor Company of Canada Limited and Ford Motor Company);
- 10.4. General Motors (General Motors of Canada Limited and General Motors Corporation);
- 10.5. FCA (FCA Canada Inc. and FCA US LLC);
- 10.6. Mercedes (Mercedes-Benz Canada Inc. and Daimler AG);
- 10.7. Mitsubishi (Mitsubishi Motor Sales of Canada, Inc., Mitsubishi Motors North America, Inc., and Mitsubishi Motors Corporation);
- 10.8. Volkswagen (Volkswagen Group Canada Inc. and Audi Canada Inc.);

[11] In Ontario, the certification of the class action against FCA was sought in the case of *Coles v. FCA Canada Inc.* (CV-16-543764-00CP) (the “*Coles Action*”);

[12] On September 30, 2022, further to a contested class certification process, Justice Perell of the Ontario Superior Court of Justice dismissed the certification application in the *Coles Action*⁶, on the basis that after all those years Mr. Coles’ proposed class action did not satisfy the preferable procedure criterion because his class action was determined to not be preferable to an alternative method of resolving the claims. Chrysler Canada’s existing recall campaign was determined to be preferable to a class action.

[13] Under the *Class Proceedings Act, 1992*, of Ontario, one of the criterion for certification is the preferable procedure criterion. Preferability captures the ideas of: (a)

⁴ *Vitoratos c. Takata Corporation*, 2020 QCCS 853.

⁵ *Vitoratos c. Takata Corporation*, 2021 QCCS 231.

⁶ Exhibit R-1 a), Reasons for Decision (*Coles v. FCA Canada Inc.*, 2022 ONSC 5575).

whether a class proceeding would be an appropriate method of advancing the claims of the class members; and (b) whether a class proceeding would be better than other methods such as joinder, test cases, consolidation, and any other means of resolving the dispute.

[14] Mr. Cole withdrew or discontinued its appeal of the certification decision and has agreed to relinquish any further right to appeal the certification decision. A discontinuance was filed in Ontario and accepted by Justice Perell⁷.

[15] The agreement between the parties for the dismissal of the *Coles* Action on a without costs basis was incumbent on the discontinuance by the consortium of plaintiffs' counsel of all other actions against FCA in relation to the subject matter of the litigation, including the present class action.

[16] On September 23rd, 2023; Plaintiffs' counsels advised the Court of their intent to discontinue the motion for Authorization in this file.

[17] On October 17, 2023, the Plaintiffs filed an application for a partial discontinuance, seeking permission to discontinue the present legal proceedings as against the FCA Respondents under articles 9 al .2, 19, and 585 C.C.P. and based on the above-summarized situation;

[18] Respondents FCA Canada Inc. and FCA USA LLC consent to the discontinuance without legal costs;

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

FOR THESE REASONS, THE COURT:

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

[20] **ACCORDE** la demande; **GRANTS** the Application;

[21] **AUTORISE** les demanderessees à se désister de sa demande pour autorisation d'exercer une action collective et pour attribuer le statut de représentant aux demanderessees uniquement à l'encontre des intimées FCA Canada Inc. et FCA USA LLC; **AUTHORIZES** the Plaintiffs to discontinue its Application to Authorize the Bringing of a Class Action & to Designate the Plaintiffs as Representatives only as against Respondents FCA Canada Inc. and FCA USA LLC;

[22] **PRENDS ACTE** de l'engagement des avocats de la demanderesse de publier le présent jugement sur leur site web dans la section Takata - rappel des **PRAYS ACT** of Plaintiff's counsel undertaking to publish this judgment on their website in the Takata Airbag Recall National Class Action section for

⁷ Exhibit R-1 b).

coussins gonflables – recours collectif a period of at least 120 days from the
national pour une période d'au moins 120 date of this judgment
jours à compter du présent jugement.

[23] **PRENDS ACTE** de l'engagement **PRAYS ACT** of Plaintiff's counsel
des avocats de la demanderesse undertaking to send a copy of this
d'envoyer une copie du jugement par judgment by email to the members of
courriel aux membres du groupe. the class,

[24] **ORDONNE** la publication de ce **ORDERS** the publication of this
jugement au registre des actions judgment on the Registry of class
collectives. actions.

[25] **LE TOUT**, sans frais de justice, **THE WHOLE**, without legal costs,

PIERRE NOLLET, J.C.S.

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Hearing date : (Paper process only) October 31, 2023