

# **SUPERIOR COURT**

(Class Action)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000723-144

DATE: June 16, 2022

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

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**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  
**MINI OF CANADA INC.**  
and  
**MINI NORTH AMERICA**  
and  
**MINI NORTH AMERICA INC.**  
and  
**MINI OF CANADA INC.**  
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

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JUDGMENT (DISCONTINUANCE HIGHLAND INDUSTRIES INC).

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[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 3 of which were Takata-related entities:

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

[5] Takata is a Japanese corporation, with TK Holdings and Highland among its American subsidiaries all of which designed, manufactured, tested, marketed, distributed, supplied, and sold airbags or airbag fabrics;

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

[7] By judgment dated October 2, 2019, this Court authorized the partial discontinuance of the class action as against Takata and TK Holdings, but not as against Highland as the Plaintiffs/Class Representatives had not so requested at the time;

[8] The reasons for the partial discontinuance were that Takata and TK Holdings had both commenced Chapter 11 proceedings in the United States, the Chapter 11 Plan was eventually approved and recognized in Canada 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.

[9] Under the Chapter 11 Plan, all claimants were “permanently enjoined from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceedings of any kind (including any proceeding in a judicial, arbitral, administrative, or other forums) against or affecting, directly or indirectly, a Debtor [which includes TK Holdings Inc.]....”.



[10] Takata Corporation and Highland Industries, Inc. were each 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...”

[11] Plaintiffs/Class Representatives determined not to continue to proceed with this litigation as against Takata and TK Holdings. At the time, the Plaintiffs/Class Representatives did not request that the partial discontinuance equally applies to Highland as it had not been named in the other Canadian class proceedings and was therefore not requested in the other jurisdictions;

[12] Following an agreement between counsel in these proceedings to coordinate and concentrate efforts in one jurisdiction only, this class action is being pursued in Ontario, having been suspended pursuant to the judgment of this Court dated October 2, 2019;

[13] At present, Class Counsel has determined not to continue this litigation as against Highland as it was not named in Ontario, where this litigation is being pursued, and considering the releases in favour of Highland in the Chapter 11 Plan;

[14] On April 22, 2022, the Plaintiffs/Class Representatives filed an application for a partial discontinuance seeking permission to discontinue the present legal proceedings as against Respondent Highland Industries, Inc. under articles 9 al .2, 19, and 585 C.C.P. and based on the above-summarized situation;

[15] **CONSIDERING** that the Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative has not yet been approved;

[16] **SEEING** the consent by the Respondent Highland Industries, Inc. to the discontinuance without legal costs;

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

### **CONCLUSION**

#### **FOR THESE REASONS, THE COURT:**

[17] **ACCORDE** la présente demande; **GRANTS** the present Application;

[18] **AUTORISE** les demanderessees à se **AUTHORIZES** the Plaintiffs/Class désister de la sixième demande amendée Representatives to discontinue the Sixth pour autorisation d’exercer une action Amended Application to Authorize the collective et pour attribuer le statut de Bringing of a Class Action & to Designate représentant aux demanderessees the Plaintiffs/Class Representatives as

uniquement à l'encontre de l'intimée Representatives only as against  
Highland Industries, Inc.; Respondent Highland Industries, Inc.;

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

**THE WHOLE** without legal costs.

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PIERRE NOLLET, J.S.C.

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Hearing date : (Paper process only) June 16, 2022