

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO : 500-06-000825-162

SUPERIOR COURT
(Class Action Division)

THIERRY MURATON

Plaintiff

v.

TOYOTA CANADA INC.

Defendant

APPLICATION FOR A CLOSING JUDGMENT

(Article 590 of the *Code of Civil Procedure* and section 130 of the *Directives of the Superior Court – Montreal Division*)

TO THE HONOURABLE DONALD BISSON, COORDINATING JUDGE OF THE CLASS ACTION DIVISION OF THE SUPERIOR COURT OF QUEBEC, THE DEFENDANT SUBMITS THE FOLLOWING IN SUPPORT OF ITS APPLICATION:

I. INTRODUCTION

1. In this application, the Defendant Toyota Canada Inc. seeks a judgment declaring the closure of the present class action proceedings.

II. PROCEDURAL HISTORY, CONTEXT OF SETTLEMENT, AND SETTLEMENT APPROVAL

2. On November 17, 2016, the Plaintiff Thierry Muraton filed a *Demande pour autorisation afin d'exercer une action collective* on behalf of the following class:

Toute personne physique ou morale au Canada ayant acheté et/ou loué et/ou possédant l'un des véhicules automobiles suivants fabriqués par la défenderesse :

*Toyota Tacoma (modèles 2005 à 2010);
Toyota Tundra (modèles 2007-2008);
Toyota Sequoia (modèles 2005 à 2008).*

3. The Plaintiff claimed damages due to allegedly excessive and allegedly premature corrosion of the frames of the vehicles listed in the class definition.
4. On April 25, 2017, the Defendant filed an application to stay the present proceedings until a certification judgment was rendered in one of three parallel proceedings filed in Ontario, as appears from the Court file.
5. On May 5, 2017, Justice Pierre-C. Gagnon of the Superior Court of Quebec dismissed the application for a stay.
6. On May 18, 2018, the Defendant and each of the plaintiffs in the Quebec and Ontario proceedings concluded a national settlement agreement (hereafter, the "**Settlement Agreement**"), as appears from the Court record. For ease of reference, this Settlement Agreement is attached as **Exhibit C-1**.
7. Generally speaking, the Settlement Agreement provides that class members could obtain inspections of their frames and either the replacement thereof or the application of a Corrosion-Resistant Compound,¹ depending on whether the claim satisfied the Rust Perforation Standard, which requires the presence of a perforation of 10 millimeters or larger, as described in the Defendant's Inspection Protocol.
8. In the Settlement Agreement, this initiative is referred to as the Frame Inspection and Replacement Program.
9. In addition to the Frame Inspection and Replacement Program, the Settlement Agreement provides that class members who incurred costs prior to November 19, 2018 in connection with the replacement of a frame could obtain reimbursements, if their claim satisfied the Rust Perforation Standard.
10. On June 8, 2018, Justice Gagnon rendered a judgment which, *inter alia*, authorized the present class action proceedings for the purposes of settlement approval, appointed Crawford & Company (now doing business as Epiq) as the settlement administrator (hereafter, the "**Administrator**"), and approved the notices of a settlement approval hearing jointly proposed by the parties. For ease of reference, this judgment is attached as **Exhibit C-2**.
11. That same day, a parallel *pro forma* certification and notice approval order was rendered in Ontario by the Honourable Calum McLeod, as appears from a copy thereof, communicated herewith as **Exhibit C-3**.

¹ The definitions in the Settlement Agreement apply to all capitalized terms not defined herein, except "Plaintiff" and "Defendant," which, of course, refer to Thierry Muraton and Toyota Canada Inc. respectively.

12. The notices of a settlement approval hearing were sent during the months of June and July 2018.
13. Ninety-six thousand six hundred and twenty-five notices were sent by direct mail. In addition, notices were published in 13 daily and two weekly newspapers. During that same time, notices also appeared online on various websites. Class members could obtain additional information via a dedicated toll-free number and a dedicated website. Finally, a press release was published on June 21, 2018, and this press release was picked up by several Canadian news media.
14. Following the successful execution of the notice program, the settlement approval hearing was held. On September 14, 2018, Justice Gagnon rendered a judgment approving the Settlement Agreement, as appears from the Court file. For ease of reference, the settlement approval judgment is communicated herewith as **Exhibit C-4**.
15. That same day, the Ontario Superior Court of Justice rendered its own order approving the Settlement Agreement, which is communicated herewith as **Exhibit C-5**.

III. SETTLEMENT EXECUTION

16. Pursuant to subsection 7.1(B) of the Settlement Agreement, class members could make claims thereunder as long as their claim was made:
 - a) Within 12 years of the date of original sale or lease of their vehicle; or
 - b) If the class member in question owned or leased their vehicle for more than 12 years already, one year and 30 days after the first date on which the pre-approval notice was disseminated to the class.
17. The newest model year covered by the settlement is the 2010 Toyota Tacoma. The Defendant has confirmed to the Administrator that the last date of original sale or lease of this model year was June 30, 2011, such that the last possible date on which a class member could file a claim was June 30, 2023.
18. That date has now passed such that no further relief can be claimed under the Settlement Agreement, the execution of which has been completed.
19. In the settlement approval judgment, Justice Gagnon held that following the execution of the Settlement Agreement, the Administrator would have to submit a detailed report indicating, for each of Quebec and Canada, how many class members had a vehicle inspected, how many had a Corrosion-Resistant Compound applied, how many had a frame replaced, and how many obtained a reimbursement for a frame already replaced.

20. The Defendant and the Administrator have prepared reports in the form of two detailed letters setting out each of the particulars requested by Justice Gagnon. As can be seen from the two reports, copies of which are communicated herewith as **Exhibit C-6, en liasse**:
 - a) 5,084 frames were replaced in Canada, including 1,215 in Quebec;
 - b) 20,915 frames were inspected in Canada, including 3,743 in Quebec;
 - c) 11,190 applications of the Corrosion Resistant Compounds were performed in Canada, including 2,076 in Quebec; and
 - d) 26 claims for reimbursement of already-incurred expenses were submitted by Canadian class members, and five of these claims were determined to meet the conditions of payment. These figures include the three claims submitted by Quebec class members, and the one of those claims that was determined to meet the conditions for payment. Payments were made by cheque, and all of the cheques have been cashed.
21. Because one cash payment was made to a Quebec class member, the Administrator made a payment to the *Fonds d'aide aux actions collectives* (hereafter, the "**Class Actions Assistance Fund**" or the "**Fund**"). This payment of \$224.92 was made pursuant to section 7.2(H) of the Settlement Agreement and section 1(3) of the *Regulation Respecting the Percentage Withheld by the Fonds d'aide aux actions collectives*.
22. No further amounts are due to the Class Actions Assistance Fund, as the Plaintiff did not receive any financial assistance from the Fund.
23. As further appears from Exhibit C-6, the Administrator also reports the following:
 - a) It received 4,213 settlement related inquiries from class members via email and telephone; and
 - b) 922 of these inquiries were emails, 75 of which were from members who said that they were residents of Quebec.
24. Thirty-seven class members opted out of the settlement, and 15 of these opt-outs were from Quebec.
25. As explained in section 7 of the Settlement Agreement, the obligation to implement the Frame Inspection and Replacement Program and to provide reimbursements to eligible class members is the Defendant's sole obligation to the class.
26. That obligation has now been fulfilled, as evidenced by Exhibit C-6.

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27. Given that the Defendant's obligation under the Settlement Agreement has been fulfilled, given that the period for making claims thereunder is now over, and given that the Defendant and the Administrator have issued their final reports, the present class action proceedings can definitively be closed.
28. This application is therefore well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT this Application for a Closing Judgment.

DECLARE that the Defendant has satisfied its obligations pursuant to the Settlement Agreement filed into the Court record and approved by the Superior Court of Quebec via a judgment rendered on September 14, 2018.

DECLARE that there are no further obligations incumbent on the parties to the present proceedings.

DECLARE that the present proceedings are closed.

THE WHOLE without costs, except if contested.

MONTREAL, December 21, 2023

(s) Torys Law Firm LLP

TORYS LAW FIRM LLP
Attorneys for the Defendant

M^{tre} Sylvie Rodrigue
srodrigue@torys.com

Tel.: 514.868.5601

M^{tre} Cristina Cosneanu

Tel.: 514.868.5611

ccosneanu@torys.com

1 Place Ville Marie, Suite 2880

Montreal, QC H3B 4R4

Fax: 514.868.5700

notifications-mtl@torys.com

Permanent Code: BS-2554

Our Reference: 39020-2003

TRUE COPY

Torys Law Firm LLP

Torys Law Firm LLP

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AFFIDAVIT

I, the undersigned, **Sylvie Rodrigue, Ad. E.**, attorney exercising my profession at the offices of Torys Law Firm LLP, situated at 1 Place Ville Marie, Suite 2880, in the City and District of Montréal, Province of Quebec, do hereby solemnly declare as follows:

1. I am one of the attorneys representing the Defendant Toyota Canada Inc. herein.
2. I have taken cognizance of the Application and all the facts alleged therein are accurate to the best of my knowledge.

**AND I HAVE SIGNED IN TORONTO,
ONTARIO**



SYLVIE RODRIGUE, AD. E.

Solemnly declared before me by
videoconference, in Montréal, Quebec,
this 21st day of December 2023



Rosinella Cieri
Commissioner for Oaths for Quebec and
outside of Quebec

TRUE COPY

Torys Law Firm LLP

Torys Law Firm LLP

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NOTICE OF PRESENTATION

TO :

Me David Assor
LEX GROUP INC
4101 Sherbrooke St. West
Westmount, QC H3Z 1A7

Attorneys for the Plaintiff

TAKE NOTICE that the *Application for a Closing Judgment* will be presented for decision before the Honourable Donald Bisson, coordinating judge in the Class Action Division of the Superior Court of Quebec, in the Montreal Courthouse situated at 1 Notre-Dame Street East, Montreal, QC H2Y 1B6, room and date to be determined later.

PLEASE GOVERN YOURSELF ACCORDINGLY.

MONTREAL, December 21, 2023

(s) Torys Law Firm LLP

TORYS LAW FIRM LLP
Lawyers for the Defendant
M^{tre} Sylvie Rodrigue
srodrigue@torys.com
Tel.: 514.868.5601
M^{tre} Cristina Cosneanu
Tel.: 514.868.5611
ccosneanu@torys.com
1 Place Ville Marie, Suite 2880
Montreal, QC H3B 4R4
Fax: 514.868.5700
notifications-mtl@torys.com
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LIST OF EXHIBITS AND EXHIBITS C-1 TO C-6**

COPY

M^{tre} Sylvie Rodrigue, Ad. E.

srodrigue@torys.com

TORYS LAW FIRM LLP

1 Place Ville Marie, Suite 2880
Montréal (Québec) H3B 4R4

Tel: 514.868.5601

Fax : 514.868.5700

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