

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000915-187

DATE: February 25, 2021

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

ZULLY LILIANA SALAZAR PASAJE

Applicant

v.

BMW CANADA INC.

and

BAYERISCHE MOTOREN WERKE AG

and

BMW OF NORTH AMERICA, LLC

and

BMW MANUFACTURING CO., LLC

Defendants

JUDGMENT

(ON A CONSOLIDATED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AGAINST BMW CANADA INC. FOR SETTLEMENT PURPOSES, FOR APPROVAL OF NOTICES TO CLASS MEMBERS OF A SETTLEMENT APPROVAL HEARING, TO APPOINT A CLAIMS ADMINISTRATOR AND FOR PERMISSION TO DISCONTINUE AGAINST CERTAIN DEFENDANTS)

[1] **CONSIDERING** the *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* filed on September 17, 2018

against BMW Canada Inc., Bayerische Motoren Werke AG, BMW of North America, LLC and BMW Manufacturing Co., LLC on behalf of the following Class:

Class:

All natural or legal persons, except for Excluded Persons, who were resident of the Province of Quebec and who owned or leased a BMW Vehicle subject to Recall Campaign No. 2017-470 or Recall Campaign No. 2019-170, and/or Recall Campaign No. 2017-588 or Recall Campaign No. 2019-384, including certain BMW 1 Series (models 2008 to 2012), BMW 3 Series (models 2006 to 2011), BMW 5 Series (models 2006 to 2011), BMW X3 (models 2007 to 2011), BMW X5 (models 2007 to 2010) and BMW Z4 (models 2006 to 2011), on the date of the applicable Recall Campaign(s);

[2] **CONSIDERING** that on December 20, 2018, the Court allowed the Defendants to file Gordon Farrish's Sworn Declaration dated September 20, 2018, and the Annexes A, B, C and D in support thereof, as well as Karen Aulbach's Sworn Declaration dated September 20, 2018;¹

[3] **CONSIDERING** the *Consolidated Application for Authorization to Institute a Class Action for Settlement Purposes, for Approval of Notices to Class Members of a Settlement Approval Hearing, to Appoint a Claims Administrator and for Permission to Discontinue against certain Defendants* dated December 18, 2020 (the "**Consolidated Application**");

[4] **CONSIDERING** the transaction executed between the Applicant and BMW Canada Inc. filed as Exhibit R-1 in support of the Consolidated Application (the "**Settlement Agreement**");

[5] **CONSIDERING** that, pursuant to the Consolidated Application, the Applicant is asking the Court to:

- a) allow her to discontinue the class action in favour of Defendants Bayerische Motoren Werke AG, BMW of North America, LLC and BMW Manufacturing Co., LLC;
- b) authorize a modification to the class description for the purposes of settlement;

¹ *Salazar Pasaje c. BMW Canada Inc.*, 2018 QCCS 5635.

- c) authorize the proposed class action for settlement purposes as against BMW Canada Inc. only;
- d) appoint Zully Liliana Salazar Pasaje as representative plaintiff of the class for settlement purposes only;
- e) appoint Collectiva Class Actions Services Inc. as the Claims Administrator pursuant to the terms of the Settlement Agreement; and
- f) approve the form and content of the Pre-Approval Notices to class members, including the Objection Period and/or the Opt-Out Period and the deadlines associated thereto, as well as the dissemination plan thereof.

[6] **CONSIDERING** the proposed French and English versions of the Long Form Pre-Approval Notice filed as Exhibit R-2 and the Short Form Pre-Approval Notice filed as Exhibit R-3 in support of the Consolidated Application;

[7] **CONSIDERING** the submissions of counsel for the Applicant and counsel for the Defendants who consent to the Consolidated Application;

[8] **CONSIDERING** that the criteria set out in article 575 of the *Code of Civil Procedure* to authorize a class action are applied with flexibility when the authorization of the class action is sought for settlement purposes;²

[9] **CONSIDERING** that the Court is of the opinion that the four criteria set out in article 575 of the *Code of Civil Procedure* to authorize a class action are met, namely that:

- (1) the claims of the members of the class raise identical, similar or related issues of law or fact;
- (2) the facts alleged appear to justify the conclusions sought;
- (3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and
- (4) the class member appointed as representative plaintiff is in a position to properly represent the class members;

[10] **CONSIDERING** that a discontinuance without costs in favour of Defendants Bayerische Motoren Werke AG, BMW of North America, LLC and BMW Manufacturing Co., LLC is appropriate in the circumstances;

² *Dupuis c. Polyone Canada inc.*, 2016 QCCS 2561, par. 9.

[11] **CONSIDERING** articles 575, 576, 579, 580, 581, 585 and 590 of the *Code of Civil Procedure*;

POUR CES MOTIFS, LA COUR :	FOR THESE REASONS, THE COURT:
<p>[12] ACCUEILLE la demande intitulée « <i>Consolidated Application for Authorization to Institute a Class Action for Settlement Purposes, for Approval of Notices to Class Members of a Settlement Approval Hearing, to Appoint a Claims Administrator and for Permission to Discontinue against certain Defendants</i> »;</p>	<p>[12] GRANTS the <i>Consolidated Application for Authorization to Institute a Class Action for Settlement Purposes, for Approval of Notices to Class Members of a Settlement Approval Hearing, to Appoint a Claims Administrator and for Permission to Discontinue against certain Defendants</i>;</p>
<p>[13] AUTORISE la demanderesse à se désister de l'action collective en faveur des défenderesses Bayerische Motoren Werke AG, BMW of North America, LLC et BMW Manufacturing Co., LLC, sans frais ;</p>	<p>[13] AUTHORIZES the Applicant to discontinue the class action in favour of Defendants Bayerische Motoren Werke AG, BMW of North America, LLC and BMW Manufacturing Co., LLC, without costs;</p>
<p>[14] AUTORISE la demanderesse, aux seules fins de règlement avec la défenderesse BMW Canada inc., à modifier comme suit la description du groupe se trouvant dans la « <i>Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff</i> » :</p> <p>Toutes les personnes physiques ou morales, à l'exception des Personnes Exclues, qui étaient résidentes de la province de Québec et qui possédaient ou louaient un Véhicule BMW visé par la Campagne de rappel no. 2017-470 ou la Campagne de rappel no. 2019-170, et/ou la Campagne de rappel no. 2017-588 ou la Campagne de rappel no. 2019-384, y compris certains modèles BMW Série 1 (modèles 2008 à 2012), BMW Série 3 (modèles 2006 à 2011), BMW Série 5 (modèles 2006 à 2011), BMW X3 (modèles 2007 à 2011), BMW X5 (modèles 2007 à</p>	<p>[14] AUTHORIZES the Applicant, for the purpose of settlement only with Defendant BMW Canada Inc., to amend as follows the class description in the "<i>Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff</i>":</p> <p>All natural or legal persons, except for Excluded Persons, who were resident of the Province of Quebec and who owned or leased a BMW Vehicle subject to Recall Campaign No. 2017-470 or Recall Campaign No. 2019-170, and/or Recall Campaign No. 2017-588 or Recall Campaign No. 2019-384, including certain BMW 1 Series (models 2008 to 2012), BMW 3 Series (models 2006 to 2011), BMW 5 Series (models 2006 to 2011), BMW X3 (models 2007 to 2011), BMW X5 (models 2007 to 2010) and BMW Z4 (models 2006 to 2011), on the date of the applicable Recall Campaign(s) (the "Class")</p>

2010) et BMW Z4 (modèles 2006 à 2011), à la date de la ou des Campagne(s) de rappel applicable(s) (le « Groupe » ou les « membres du Groupe »);	or “ Class Members ”);
[15] AUTORISE l'exercice de l'action collective contre la défenderesse BMW Canada inc. aux seules fins de règlement;	[15] AUTHORIZES the bringing of a class action against the Defendant BMW Canada Inc. for settlement purposes only;
[16] DÉSIGNE et ATTRIBUE à la demanderesse, Zully Liliana Salazar Pasaje, le statut de représentante du Groupe aux seules fins de règlement;	[16] APPOINTS the Applicant, Zully Liliana Salazar Pasaje, the status of representative plaintiff for settlement purposes only;
[17] IDENTIFIE aux seules fins de règlement, la question commune à traiter collectivement comme suit : a) Les véhicules faisant l'objet (i) de la Campagne de rappel no. 2017-470 ou de la Campagne de rappel no. 2019-170, et/ou (ii) de la Campagne de rappel no. 2017-588 ou de la Campagne de rappel no. 2019-384 ont-ils été affectés par des vices cachés et, si oui, les membres du Groupe ont-ils droit à des dommages-intérêts?	[17] IDENTIFIES for the purposes of settlement only, the common question to be dealt with collectively as follows: a) Were the Vehicles subject to (i) Recall Campaign No. 2017-470 or Recall Campaign No. 2019-170, and/or (ii) Recall Campaign No. 2017-588 or Recall Campaign No. 2019-384 affected by latent defects, and, if so, are Class Members entitled to damages?
[18] APPROUVE la forme, le contenu et le plan de dissémination des Avis de préapprobation aux membres du Groupe dans leurs versions française et anglaise (Pièces R-2 et R-3);	[18] APPROVES the form, content and dissemination plan of the Pre-Approval Notices to Class Members, in their French and English versions (Exhibits R-2 and R-3);
[19] DÉSIGNE Collectiva Class Actions Services inc. à titre d'Administrateur des réclamations afin de s'acquitter des tâches qui lui incombent en vertu de la Transaction ;	[19] APPOINTS Collectiva Class Actions Services Inc. as the Claims Administrator for the purposes of accomplishing the tasks that devolve to it pursuant to the Settlement Agreement;
[20] DÉCLARE que les parties à la Transaction ne sont pas responsables de l'administration du règlement et n'ont aucune responsabilité ou obligation	[20] DECLARES that the Parties to the Settlement Agreement have no responsibility for the administration of the settlement and shall not have any liability

<p>financière à l'égard des actes, de la négligence ou de la malfeasance de l'Administrateur des réclamations, ni en ce qui concerne l'investissement, la distribution ou l'administration des fonds de règlement une fois qu'ils ont été remis à l'Administrateur des réclamations ;</p>	<p>or financial obligation whatsoever with respect to any acts, negligence or malfeasance of the Claims Administrator, nor in relation to the investment, distribution or administration of monies once they have been remitted to the Claims Administrator;</p>
<p>[21] ORDONNE à l'Administrateur des réclamations, dans les trente (30) jours du présent jugement, de diffuser les Avis de préapprobation conformément à la clause 7 de la Transaction, comme suit :</p> <p>a) Publier l'Avis détaillé de préapprobation dans ses versions française et anglaise (Pièce R-2) sur le Site Web du Règlement;</p> <p>b) Envoyer par courriel une copie de l'Avis détaillé de préapprobation dans ses versions française et anglaise (Pièce R-2) à chacun des membres du Groupe de règlement pour lesquels BMW Canada inc. possède une adresse électronique telle qu'identifiée dans les bases de données clients qu'elle tient à jour;</p> <p>c) Publier l'Avis abrégé de préapprobation (Pièce R-3) une fois dans la langue appropriée dans chacun des journaux suivants, sous réserve des dates disponibles, ces publications étant à la charge de BMW Canada inc.:</p> <ul style="list-style-type: none"> i. Le Journal de Montréal; ii. La Presse+; iii. Le Journal de Québec; iv. The Montreal Gazette. 	<p>[21] ORDERS the Claims Administrator, within thirty (30) days of the present judgment, to disseminate the Pre-Approval Notices pursuant to clause 7 of the Settlement Agreement, as follows:</p> <p>a) Publish the Long Form Pre-Approval Notice in its French and English versions (Exhibit R-2) on the Settlement Website;</p> <p>b) Send by email a copy of the Long Form Pre-Approval Notice in its French and English versions (Exhibit R-2) to each of the Settlement Class Members for whom BMW Canada Inc. has an email address as identified from the customer databases it maintains;</p> <p>c) Publish the Short Form Pre-Approval Notice (Exhibit R-3) once in the appropriate language in each of the following newspapers, subject to available dates, at BMW Canada Inc.'s costs:</p> <ul style="list-style-type: none"> i. Le Journal de Montréal; ii. La Presse+; iii. Le Journal de Québec; iv. The Montreal Gazette.
<p>[22] ORDONNE aux procureurs du Groupe, dans les dix (10) jours du présent</p>	<p>[22] ORDERS Class Counsel, within ten (10) days of the present judgment, to</p>

<p>jugement, de publier l'Avis détaillé de préapprobation dans ses versions française et anglaise (Pièce R-2) sur le site web des procureurs du Groupe (www.lpclex.com/fr/bmw-recall) et d'envoyer un courriel aux personnes qui se sont jusqu'à ce jour inscrites à la présente action collective sur le site web des procureurs du Groupe contenant un hyperlien vers l'Avis détaillé de préapprobation (Pièce R-2);</p>	<p>publish the Long Form Pre-Approval Notice in its French and English versions (Exhibit R-2) on Class Counsel's website (www.lpclex.com/bmw-recall) and to send an email to individuals who signed up to this class action on Class Counsel's website, up until to the present date, containing a hyperlink to the Long Form Pre-Approval Notice (Exhibit R-2);</p>
<p>[23] DÉCLARE que les membres du Groupe désirant s'exclure de l'action collective et de la Transaction devront transmettre un avis écrit confirmant leur intention de s'exclure du groupe de la manière prévue à la clause 8 de la Transaction et au plus tard dans les quarante-cinq (45) jours de la première communication ou publication des Avis de préapprobation (Pièces R-2 et R-3);</p>	<p>[23] DECLARES that Class Members who wish to opt-out from the class action and the Settlement Agreement thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for at clause 8 of the Settlement Agreement and within forty-five (45) days following the first communication or publication of the Pre-Approval Notices (Exhibits R-2 and R-3);</p>
<p>[24] DÉCLARE que les membres du Groupe qui n'auront pas requis leur exclusion du Groupe seront liés par tout jugement à être rendu quant à la présente action collective à être instituée conformément à la loi;</p>	<p>[24] DECLARES that all Class Members that have not requested their exclusion be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;</p>
<p>[25] DÉCLARE que les membres du Groupe qui souhaitent s'opposer à l'approbation par cette Cour de la Transaction doivent le faire de la manière prévue à la clause 8 de la Transaction et au plus tard dans les quarante-cinq (45) jours de la première communication ou publication des Avis de préapprobation (Pièces R-2 et R-3);</p>	<p>[25] DECLARES that Class Members who wish to object to Court approval of the Settlement Agreement must do so in the manner provided for at clause 8 of the Settlement Agreement and within forty-five (45) days following the first communication or publication of the Pre-Approval Notices (Exhibits R-2 and R-3);</p>
<p>[26] FIXE la présentation de la Demande pour approbation de la Transaction et des honoraires des procureurs du Groupe au 1^{er} juin 2021 à 9h30 au Palais de Justice</p>	<p>[26] SCHEDULES the presentation of the Application for Approval of the Settlement Agreement and of Class Counsel fees, costs and disbursements on June 1st, 2021</p>

de Montréal;	at 9:30 a.m., at the Montréal courthouse;
[27] ORDONNE que la date et l'heure pour la tenue de l'Audience d'Approbation de la Transaction soient indiquées dans les Avis de préapprobation (Pièces R-2 et R-3), bien qu'elles puissent être reportées par la Cour sans autre avis aux membres du Groupe autre que l'avis qui sera affiché sur le site des procureurs du Groupe https://www.lpclex.com/fr/bmw-recall/ ;	[27] ORDERS that the date and time of the Approval Hearing shall be set forth in the Pre-Approval Notices (Exhibits R-2 and R-3), but may be subject to adjournment by the Court without further publication notice to the Class Members, other than such notice which will be posted on Class Counsel's website https://www.lpclex.com/bmw-recall/ ;
[28] LE TOUT , sans frais.	[28] THE WHOLE , without costs.



 SUZANNE COURCHESNE, J.S.C.

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