

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000723-144

DATE: January 22, 2025

PRESIDING: THE HONOURABLE JUSTICE PIERRE NOLLET, S.C.J.

ELENI VITORATOS

and

ANDREA FREY

Petitioners

v.

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

FORD MOTOR COMPANY OF CANADA LIMITED

and

FORD MOTOR COMPANY

and

GENERAL MOTORS OF CANADA LIMITED

and

GENERAL MOTORS CORPORATION

and

DAIMLER AG

and

JN 0326

MITSUBISHI MOTOR SALES OF CANADA, INC.
and
MITSUBISHI MOTORS NORTH AMERICA, INC.
and
MITSUBISHI MOTORS CORPORATION
and
VOLKSWAGEN GROUP CANADA INC.
and
AUDI CANADA INC.
and
MERCEDES-BENZ CANADA INC.
Respondents

JUDGMENT ON APPLICATION FOR DISCONTINUANCE

[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] It has been 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 Defective Vehicles. The Respondents have denied and continue to deny Petitioners' allegations.

[3] Similar class proceedings have been ongoing, charging substantially similar allegations in Ontario, consisting of 6 proceedings¹ that have been coordinated

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.

pursuant to a consortium agreement with 2 others in Saskatchewan, and in British Columbia.²

[4] 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..

[5] 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. suspended the present class action until the final resolution of the proceedings in Ontario or until such time as the Court decides otherwise.³

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

- 6.1 Takata Corporation and TK Holdings, Inc. by judgment dated October 2, 2019;
- 6.2 Highland Industries, Inc. by judgment dated June 16, 2022.

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

- 7.1 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, 2020;⁴
- 7.2 Honda (Honda Canada Inc. and Honda Motor Co., Ltd.) by judgment dated January 22, 2021.⁵

[8] The following seven groups of 18 Respondents remain in the file:

- 8.1 BMW (BMW Canada Inc./BMW Group Canada, BMW Of North American, LLC, BMW Manufacturing Co. LLC, and BMW AG);
- 8.2 Nissan (Nissan Canada Inc., Nissan North America Inc., and Nissan Motor Co. Ltd.);
- 8.3 Ford (Ford Motor Company of Canada Limited and Ford Motor Company);

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](#).

⁴ *Vitoratos c. Takata Corporation*, [2020 QCCS 853](#).

⁵ *Vitoratos c. Takata Corporation*, [2021 QCCS 231](#).

- 8.4 General Motors (General Motors of Canada Limited and General Motors Corporation);
- 8.5 Mercedes (Mercedes-Benz Canada Inc. and Daimler AG);
- 8.6 Mitsubishi (Mitsubishi Motor Sales of Canada, Inc., Mitsubishi Motors North America, Inc., and Mitsubishi Motors Corporation);
- 8.7 Volkswagen (Volkswagen Group Canada Inc. and Audi Canada Inc.).

[9] 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*”).

[10] On September 30, 2022, further to a contested class certification process, Justice Paul 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.

[11] 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 Perell.

[12] On October 16, 2023, this Court ended the stay against FCA Canada Inc. and FCA USA LLC (the “FCA Entities”) and then, on November 2, 2023, this Court authorized the discontinuance of the present proceeding as against the FCA Entities;

[13] On November 16, 2023, Justice Perell granted the plaintiffs’ omnibus motion to discontinue the class actions on a without costs basis pursuant to an agreement by the parties.⁷

[14] On December 16, 2024, the Petitioners filed an application for a discontinuance seeking permission to discontinue the present legal proceedings under article 585 C.C.P. and based on the above-summarized situation. The Respondents consent to the discontinuance without legal costs. The Court finds the discontinuance to be in the interest of justice.

[15] However, rather than publishing the notice of discontinuance for a 120 days the Court will require a publication for 365 days given that this file has been ongoing for 10 years. Class Members may not be checking the advancement on a quarterly basis.

⁶ *Coles v. FCA Canada Inc.*, [2022 ONSC 5575](#).

⁷ *D’Haene v. BMW Canada Inc.*, [2023 ONSC 6434](#).

POUR CES MOTIFS, LE TRIBUNAL :	WHEREFORE, THE COURT:
[16] ACCORDE la demande;	GRANTS the Application;
[17] AUTORISE les Demanderesses à se désister de la sixième demande amendée pour autorisation d'exercer une action collective et pour attribuer le statut de représentant aux demanderessees;	AUTHORIZES the Petitioners to discontinue the Sixth Amended Application to Authorize the Bringing of a Class Action & to Designate the Petitioners as Representatives;
[18] APPROUVE la forme et le contenu de l'Avis de désistement, essentiellement sous la forme jointe à la présente comme l'Annexe A;	APPROVES the form and content of the Notice of Discontinuance substantially in the form as attached hereto as Schedule A;
<p>[19] ORDONNE que l'Avis de désistement soit publié et diffusé de la manière suivante:</p> <p>(a) Sur le site internet des avocats soussignés à l'adresse www.clg.org pendant une période de 365 jours à compter de la date du présent jugement,</p> <p>(b) En envoyant directement par courrier électronique l'Avis de désistement à toutes les personnes qui ont contacté Groupe de droit des consommateurs pour exprimer leur intérêt pour la présente action,</p> <p>(c) Au registre des actions collectives;</p>	<p>ORDERS that the Notice of Desistment shall be published and disseminated in the following manner:</p> <p>(a) On the undersigned attorneys' website at www.clg.org for a period of 365 days beginning at the date of this judgment,</p> <p>(b) By directly emailing the Notice of Discontinuance to all persons who contacted Consumer Law Group to express interest in the present action,</p> <p>(c) On the Registry of class actions;</p>
[20] LE TOUT , sans frais de justice.	THE WHOLE , without legal costs.



Signature numérique
de Pierre Nollet
Date : 2025.01.22
16:59:26 -05'00'

PIERRE NOLLET, J.S.C.

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Date d'audience: Paper process