



Supreme Court
New South Wales

Case Name: In re the Takata Airbags Class Actions Settlement (Preliminary Orders)

Medium Neutral Citation: [2021] NSWSC 1153

Hearing Date(s): On the papers

Decision Date: 10 September 2021

Jurisdiction: Equity - Commercial List

Before: Hammerschlag J

Decision: Orders made – see Schedule A

Catchwords: REPRESENTATIVE PROCEEDINGS – Civil Procedure Act 2005 (NSW) ss 162, 173, 175, 176(1), 176(2) – where six sets of representative proceedings are the subject of a Deed of release and settlement – application for Preliminary Orders to facilitate proposed later application for approval of settlement

Legislation Cited: Civil Procedure Act 2005 (NSW)
Privacy Act 1988 (Cth)

Cases Cited: Cantor v Audi Australia Pty Limited (No 2) [2017] FCA 1042

Category: Procedural rulings

Parties: 2017/340824 Louise Haselhurst v Toyota Motor Corporation Australia Limited
- Louise Haselhurst – Plaintiff
- Toyota Motor Corporation Australia Limited – Defendant

2017/353017 Kimley Lloyd Whisson v Subaru (Aust) Pty Limited
- Kimley Lloyd Whisson – Plaintiff

- Subaru (Aust) Pty Limited – Defendant

2017/378526 Akuratiya Kularathne v Honda Australia Pty Limited

- Akuratiya Kularathne – Plaintiff

- Honda Australia Pty Limited – Defendant

2018/9555 Owen Brewster v BMW Australia Ltd

- Owen Brewster – Plaintiff

- BMW Australia Limited – Defendant

2018/9565 Jaydan Bond v Nissan Motor Co (Australia) Pty Limited

- Jaydan Bond – Plaintiff

- Nissan Motor Co (Australia) Pty Limited – Defendant

2018/42244 Camilla Coates v Mazda Australia Pty Limited

- Camilla Coates – Plaintiff

- Mazda Australia Pty Limited – Defendant

Representation:

Counsel:

D Barnett with R May – Plaintiffs

G Rich SC with T Kane – Toyota Motor Corporation Australia Limited

Solicitors:

Quinn Emmanuel Urquhart & Sullivan – Plaintiffs

Herbert Smith Freehills – Toyota Motor Corporation Australia Limited

Clayton Utz – Subaru (Aust) Pty Limited

K & L Gates – Honda Australia Pty Limited

Ashurst – BMW Australia Ltd

Allens Linklaters – Nissan Motor Co (Australia) Pty Limited

Mills Oakley – Mazda Australia Pty Limited

File Number(s):

2017/340824

2017/353017

2017/378526

2018/9555

JUDGMENT

- 1 HIS HONOUR: By Deed of release and settlement (**the Settlement Deed**) made on 19 August 2021, parties to six separate representative proceedings (or class actions) in the Court settled the actions subject to the approval of the Court.
- 2 The defendant in each of the class actions is a distributor of motor vehicles which were fitted with airbags manufactured by Takata Corporation.
- 3 The proceedings are:
 - (a) 2017/340824 Louise Haselhurst v Toyota Motor Corporation Australia Limited (**the Toyota Proceedings**);
 - (b) 2017/353017 Kimley Whisson v Subaru (Aust) Pty Limited (**the Subaru Proceedings**);
 - (c) 2017/378526 Akuratiya Kularathne v Honda Australia Pty Limited (**the Honda Proceedings**);
 - (d) 2018/9555 Owen Brewster v BMW Australia Ltd (**the BMW Proceedings**);
 - (e) 2018/9565 Jaydan Bond v Nissan Motor Co (Australia) Pty Limited (**the Nissan Proceedings**); and
 - (f) 2018/42244 Camilla Coates v Mazda Australia Pty Limited (**the Mazda Proceedings**).
- 4 Section 173 of the *Civil Procedure Act 2005* (NSW) (**the Act**) provides:

Approval of Court required for settlement and discontinuance

 - (1) Representative proceedings may not be settled or discontinued without the approval of the Court.
 - (2) If the Court gives such approval, it may make such orders as are just with respect to the distribution of any money, including interest, paid under a settlement or paid into the Court.
- 5 The Settlement Deed records that the parties intend, as soon as practicable after the end of the registration period, to seek orders effecting consolidation of all of the proceedings and approving the settlement pursuant to s 173 of the Act.

- 6 Clause 9.3 of the Settlement Deed requires the plaintiffs in each case to seek orders, defined as “Preliminary Orders”, in the form, or substantially in the form, of an annexure to the Settlement Deed.
- 7 By Notices of Motion filed on 23 August 2021, the plaintiffs in each case move for the Preliminary Orders, being orders:
- (a) approving the notice to group members of the proposed settlement and the settlement approval application;
 - (b) allowing group members who wish to object to the proposed settlement an opportunity to do so;
 - (c) allowing group members who wish to register to participate in the proposed settlement an opportunity to do so;
 - (d) for the appointment of a scheme administrator to manage the registration process;
 - (e) giving some group members in the Toyota Proceedings notice of their right to opt out and an opportunity to do so;
 - (f) timetabling the settlement approval hearing in early 2022; and
 - (g) for money paid into court as security for costs to be paid into the plaintiffs’ solicitors trust account pending settlement approval.
- 8 The following affidavits are read in support of the application:
- Damian John Scattini – the plaintiffs’ solicitor – affirmed 23 August 2021
 - Gregory John Williams – Subaru’s solicitor – sworn 24 August and 25 August 2021
 - Peter Mark Butler – Toyota’s solicitor – sworn 26 August 2021
- 9 The orders seek approval for the form and content of Settlement Notices comprising a Long Form Notice, an abridged newspaper notice, and a covering email. There is provision for a slightly different version of the covering email for persons who have previously signed litigation funding agreements or participated in the questionnaire process referred to below. The orders make provision for a process to publish the proposed settlement.
- 10 The further opt-out process is necessitated by the fact that 6,260 Toyota Corolla vehicles (originally produced in South Africa) were identified by Toyota in about September 2020 as having been sold in Australia, and therefore, as being covered by the proceedings. When original opt-out notices were sent,

the owners of these vehicles would not, or may not, have known that they were group members.

- 11 The orders provide for the use of personal information about group members supplied by State and Territory vehicle registration authorities and the National Exchange of Vehicle and Driver Information System (**NEVDIS**) and Austroads Limited, the peak organisation of Australasian road transport and traffic agencies.
- 12 The defendants obtained data from certain State and Territory vehicle registration authorities for the purpose of conducting vehicle recalls, including email addresses from persons who may be group members. The orders require the defendants to provide the administrator with contact data to enable the provision of the Settlement Notice to those persons.
- 13 The defendants also obtained NEVDIS data off Austroads for the purposes of conducting recalls. The defendants will be required to provide the administrator of the registration process with data obtained from Austroads for the purpose of determining whether persons who register to participate in the settlement are likely to be group members.
- 14 The orders build in protections.
- 15 Austroads has advised that it does not object to the defendants consenting to the orders. The State and Territory authorities either consent, or do not oppose, the provision of data in accordance with the orders.
- 16 There is precedent for the making of these types of orders: *Cantor v Audi Australia Pty Limited (No 2)* [2017] FCA 1042.
- 17 Schedule 1 to the *Privacy Act 1988* (Cth) contains the Australian Privacy Principles. Principle 6.1, read with principle 6.2(b), prohibits Austroads from using or disclosing information about an individual, which was collected for a particular purpose, for another purpose unless, relevantly, the use or disclosure is required or authorised by a court order. The orders which I propose to make will constitute authorisation to Austroads to use the information accordingly.
- 18 Previously, the Court ordered the distribution of a questionnaire to potential group members in the Toyota Proceedings and the Subaru Proceedings. The

orders deem persons who have responded to the questionnaire to have registered to have participated in the Settlement. It will be necessary for the administrator to access that information to enable those persons to be contacted so as to enable their claims to be assessed. The orders make provision for Toyota and Subaru to provide the questionnaire responses to the administrator. The orders sought also contain protections.

- 19 The orders make provision for the appointment of a third party administrator of the proposed settlement. The evidence is that the provider can undertake the required tasks at a rate significantly lower than that of the plaintiffs' lawyers' hourly rate. The orders contemplate the third party provider creating and hosting a settlement website.
- 20 I am satisfied that orders as framed are appropriate to be made.
- 21 I will make, *mutatis mutandis*, orders in each of the proceedings in accordance with those which I will make in the Toyota Proceedings which appear as SCHEDULE A (512504, pdf) to these reasons.

Amendments

13 September 2021 - Typographical error in Schedule A

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SCHEDULE A

PROPOSED MINUTES OF ORDER

[PRELIMINARY APPLICATION – CLAUSE 9.2 OF SETTLEMENT DEED]

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial (Class Action)
Registry	Sydney
Case number	2017/00340824

TITLE OF PROCEEDINGS

Plaintiff	Louise Haselhurst
Defendant	Toyota Motor Corporation Australia Limited

PREPARATION DETAILS

Prepared for	Louise Haselhurst , Plaintiff
Legal representative	Damian Scattini, Quinn Emanuel
Contact name and telephone	Damian Scattini, 9146 3888
Contact email	damianscattini@quinnemanuel.com

TERMS OF ORDER MADE BY THE COURT BY CONSENT

THE COURT NOTES THAT:

- (A) The parties have reached an in-principle settlement in the Takata Airbag Proceedings (**Proposed Settlement**).
- (B) In these orders:

"Takata Airbag Proceedings" means:

- (a) 2017/00340824 Louise Haselhurst v Toyota Motor Corporation Australia Limited;
- (b) 2017/00353017 Kimley Whisson v Subaru (Aust) Pty Limited;
- (c) 2017/00378526 Akuratiya Kularathne v Honda Australia Pty Limited;
- (d) 2018/00009555 Owen Brewster v BMW Australia Ltd;
- (e) 2018/00009565 Jaydan Bond v Nissan Motor Co (Australia) Pty Limited; and
- (f) 2018/00042244 Camilla Coates v Mazda Australia Pty Limited.

"Affected Vehicle" means a vehicle the subject of the Takata Airbag Proceedings.

"Group Members" means the group members in the Takata Airbag Proceedings.

"Plaintiffs" means each of the plaintiffs in the Takata Airbag Proceedings.

"PRA 2020/18579 Group Members" means Toyota group members whose vehicles were subject to recall number: PRA 2020/18579.

"Settlement Scheme" means the scheme to be agreed between the parties, and subject to approval by the Court, which will set out the terms for the distribution of the settlement sum.

"The Act" means the *Civil Procedure Act 2005* (NSW).

"NEVDIS Data" means the following extracts from the National Exchange Vehicles Driver Information System (NEVDIS) provided to a Defendant in the context of a Takata-related recall action and pursuant to contractual arrangements with Austroads Pty Ltd¹, which is capable of being used to validate whether a registrant was the registered operator of an Affected Vehicle as at February 2018:

- (a) BMW:
 - (i) SR2254 dated 6 February 2018
 - (ii) SR2280 dated 16 March 2018
 - (iii) SR2330 dated 16 May 2018
- (b) Honda:
 - (i) SR2207 dated November 2017
 - (ii) SR2238 dated January 2018
 - (iii) SR2234 dated January 2018
- (c) Mazda:
 - (i) SR2265 dated 27 February 2018
- (d) Nissan:
 - (i) SR2210 dated 29 November 2017
 - (ii) SR2255 dated 6/7 February 2018
 - (iii) SR2286 dated 21 March 2018
 - (iv) SR2310 dated 24 April 2018
 - (v) SR2340 dated 28 May 2018
- (e) Subaru:

- (i) SR2237 dated 16 January 2018
- (ii) SR2260 dated 14 February 2018
- (iii) SR2300 dated 13 April 2018
- (f) Toyota
 - (i) SR2169 dated 6 October 2017
 - (ii) SR2200 dated 14 November 2017
 - (iii) SR2230 dated 28 December 2017
 - (iv) SR2301 dated 13 April 2018
 - (v) SR36328 dated 18 September 2020

THE COURT ORDERS BY CONSENT IN THE TAKATA AIRBAG PROCEEDINGS THAT:

Notice of Proposed Settlement

- 1 The form and content of the:
 - (a) long-form notice set out at Annexure A to these orders (Long Form Notice);
 - (b) covering email to Group Members set out at Annexure B to these orders (Covering Email); and
 - (c) abridged notice set out at Annexure C to these orders (Newspaper Notice),
 are approved for the purposes of sections 175(4) and 176(1) of the Act, (together, **Settlement Notices**).

Settlement Administrator

- 2 Epiq Systems Australia Pty Ltd (**Epiq**) is approved as the third-party distribution agent of the Settlement Notices.

Settlement Website

- 3 For the purpose of facilitating notification of, and registration for, the Proposed Settlement, the Plaintiffs will instruct Epiq to create and host a website the purpose of which is to display the Long Form Notice and to provide a portal pursuant to which Group Members can register to participate in the Proposed Settlement in accordance with order 17 below (**Settlement Website**).
- 4 The Settlement Website is to be made available to the public by no later than **18 October 2021**.

Distribution of the Notice of Proposed Settlement

5 Pursuant to section 176(2) of the Act, notice is to be provided to Group Members in accordance with the procedure set out in orders 6 to 11 below.

6 Continuously throughout the period from **18 October 2021** to **18 February 2022**, the Long Form Notice will be:

- (a) posted on the Settlement Website;
- (b) posted on the 'Air Bags Class Actions' section of the class actions page of the website of the Supreme Court of New South Wales (Court Website); and
- (c) available for inspection at the Sydney Registry of the Supreme Court of New South Wales.

7 Continuously throughout the period from **18 October 2021** to **18 February 2022**, the defendants will cause a link to the Court Website to be posted on:

- (a) the Australian domain of their public websites, in a prominent location visible to visitors to that webpage;
- (b) the Australian Facebook pages belonging to the defendants in a prominent location visible to visitors to that webpage,

together with the following text:

If you owned or leased a Toyota, Lexus, Subaru, Honda, BMW, Nissan or Mazda affected by the Takata airbag recall, you may be a member in a class action in which the parties have reached an in-principle settlement. That settlement is subject to Court approval. It is important that you read the Court Approved Settlement Notice to understand your rights and decide which steps you would like to take. Importantly, to be entitled to receive a settlement payment, eligible members must register their claim. Registrations must be submitted by **4:00pm AEDT on 18 February 2022**. If a group member wishes to object to the settlement, objections must be submitted by **4:00pm AEDT on 18 February 2022**. Please visit https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx for further information.

8 By **10 September 2021**, the solicitors for the Plaintiffs will provide to Epiq any email addresses they hold for each potential Group Member who has, at the date of these orders, registered his or her interest in participating in the proceeding with Regency Funding Pty Ltd (**Regency**).

- 9 By **10 September 2021**, the Defendants will provide to Epiq any email addresses that they hold in respect of any potential Group Member (including from any data supplied to them by the State and Territory registration authorities) (**Contact Data**).
- 10 The solicitors for the Plaintiffs are to instruct Epiq to, in the week commencing **18 October 2021**, send the Covering Email to each potential Group Member for whom an email address has been provided pursuant to orders 8 and 9, except PRA 2020/18579 Group Members. If further email addresses are provided after that time, the solicitors for the Plaintiffs are to instruct Epiq to send the Covering Email to those further email addresses as soon as possible.
- 11 The solicitors for the Plaintiffs will, in the week commencing **18 October 2021**, cause a copy of the Newspaper Notice to be published in a weekday edition of the following newspapers:
- (a) The West Australian;
 - (b) The Advertiser;
 - (c) The Age;
 - (d) The Mercury;
 - (e) The Sydney Morning Herald;
 - (f) The Canberra Times;
 - (g) Courier Mail; and
 - (h) Northern Territory News.
- 12 The costs of and incidental to orders 6(a), 10 and 11 above be initially borne by the Plaintiffs but on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the Takata Airbag Proceedings.

Group Member objections to Proposed Settlement

- 13 By **4:00pm AEDT on 18 February 2022**, any Group Member who intends to oppose the Proposed Settlement (**Objector**) must complete and return to the solicitors for the Plaintiffs a copy of a Notice of Objection appearing at Schedule A to the Long Form Notice (and any supporting material) and state the grounds on which they oppose the Proposed Settlement (such statement not to exceed 2 pages in length).
- 14 By **25 February 2022**, the solicitors for the Plaintiffs are to provide to the Defendants a copy of all Notices of Objection and any supporting material that was returned pursuant to order 13 of these Orders.

- 15 By **25 February 2022**, the solicitors for the Plaintiffs shall deliver to the Associate:
- (a) a copy of all materials submitted by Objectors in accordance with order 13 above, where those materials:
 - (i) shall be delivered in a sealed pack marked “*Confidential – not to be opened save by leave of his/her Honour*”; and
 - (ii) pursuant to section 183 of the Act are to be designated as confidential on the Court’s file with access restricted to the parties to the Takata Airbag Proceedings;
 - (b) alternatively, where no materials have been submitted by Objectors in accordance with order 13 above, an affidavit made by the Plaintiffs’ solicitors deposing to that fact.
- 16 Any Objector who has complied with Order 13, may attend the hearing of the Final Approval Motion (as that term is defined in Order 22 below) in person and seek leave to be heard for that purpose, but must use their best endeavours to notify the solicitors for the Plaintiffs of their intention to do so, in writing, 14 days before the hearing of the Final Approval Motion.

Settlement registration

- 17 Pursuant to section 183 of the Act any Group Member who wishes to participate in the Proposed Settlement must register their claim before **4:00pm AEDT on 18 February 2022 (Registration Deadline)** by:
- (a) completing an online registration form on the Settlement Website (**Settlement Form**); or
 - (b) emailing a copy of the Settlement Form to Epiq.
- 18 Any Group Member who has as at the date of these orders:
- (a) signed a Litigation Funding Agreement with Regency; or
 - (b) provided their details as part of the questionnaire process in the Toyota or Subaru proceeding,
- is deemed to have complied with order 17.
- 19 By **10 September 2021**, the Defendants to the Toyota and Subaru proceedings are to provide Epiq with data it holds in respect of the Group Members referred to in order 18(b).

20 By **10 September 2021**, each Defendant is to provide Epiq with the NEVDIS Data relevant to their Affected Vehicles.

21 Epiq must use the NEVDIS Data only for the purposes of determining whether a person who registers to participate in the Proposed Settlement is or is likely to be a Group Member.

Timetabling of Final Approval Hearing

22 By **28 February 2022**, the Plaintiffs are to file and serve a motion and any evidence in support for approval of the Proposed Settlement, Settlement Scheme and any ancillary orders required to finally dispose of the Takata Proceedings (**Final Approval Motion**).

23 The Final Approval Motion is listed for directions on **18 March 2022**.

24 By **7 March 2022** the Defendants are to file and serve any evidence and submissions in relation to the Final Approval Motion.

25 Such further or other orders as the Court sees fit.

Miscellaneous

26 Liberty to apply on three days' notice.

Data protection

27 Epiq must not use the Contact Data or the NEVDIS Data for any purpose other than for the purposes of complying with these orders.

28 Epiq must not copy or replicate the Contact Data or the NEVDIS Data other than for the purposes of complying with these orders, and must store the Contact Data and the NEVDIS Data securely, within Australia, in a case-specific database segregated from data for unrelated projects.

29 Epiq must limit access to the Contact Data and the NEVDIS Data to those of its employees or contractors who have a genuine reason to access it for the purposes of complying with these orders. It must instruct those people that the Contact Data and the NEVDIS Data are confidential and may not be shared or used for any purpose other than for the purposes of undertaking these orders.

30 Epiq must destroy the Contact Data and the NEVDIS Data once it has been advised by the parties that the proceeding has been finally determined, and will notify Austroads, the Secretary to the Department of Transport, Victoria and other State and Territory registration authorities in writing to confirm the destruction of the

Contact Data and NEVDIS Data. The solicitors for the Plaintiffs will provide Epiq with a list of the appropriate authorities to which to send this notification.

- 31 The Contact Data and the NEVDIS Data may not be used for marketing purposes of any kind. The Contact Data may not be used for communication with any individuals outside the scope of these orders. The NEVDIS Data may not be used for communication with any individuals.
- 32 Epiq will respond in writing within 28 days to any written inquiry (audit) by Austroads or a State or Territory registration authority in relation to the use, disclosure and protection of that authority's Contact Data or NEVDIS Data, and must promptly implement any further protection reasonably required by Austroads or the authority following that audit.
- 33 Epiq must immediately notify (as applicable) the Defendant(s), Austroads or State and Territory registration authorities of any unauthorised access to the Contact Data or NEVDIS Data, and must act promptly to minimise any breach and comply with any instructions of Austroads or a State or Territory registration authority relating to Contact Data originating from that authority or the NEVDIS Data.
- 34 Austroads or a State or Territory registration authority may apply to the Court on reasonable notice in respect of any breaches of the terms of these orders and/or for an order that the Contact Data or NEVDIS Data be destroyed.
- 35 Epiq is to be provided with a copy of these orders as well as the following notice on behalf of the State and Territory registration authorities:
- If you should use or disclose, or fail to destroy as required, any of the Contact Data in breach of the terms in these orders, you may be liable to imprisonment, sequestration of property or other punishment.*
- Any other person who knows of this order and does anything which helps or permits you to use or disclose the contact data in breach of the terms of this order may be similarly punished.*
- 36 Epiq must immediately notify (as applicable) the Defendant(s), Austroads, the Secretary to the Department of Transport, Victoria and other State and Territory registration authorities of any third-party request to access the Contact Data or NEVDIS Data under legal process, allowing Austroads or the relevant State or Territory registration authority the opportunity to object to such a request or legal process.

THE TOYOTA PROCEEDING:

The Court notes that in 2017/00340824 (the **Toyota Proceeding**):

- (A) orders for the distribution of opt out notices to group members were made in the Toyota Proceeding on 22 May 2020;
- (B) since that date, the defendant in the Toyota Proceeding has identified and recalled additional vehicles as part of the compulsory safety recall to the public issued pursuant to section 122 of the Australian Consumer Law dated 27 February 2018 (being 6,260 vehicles listed by the ACCC as forming part of PRA 2020/18759);
- (C) when opt out notices were distributed, the 6,260 additional vehicles subject to PRA 2020/18759 had not been identified by the defendant in the Toyota Proceeding and PRA 2020/18759 had not yet been issued by the ACCC; and
- (D) consequently, persons who may be group members because their vehicle is one of the 6,260 additional vehicles subject to PRA 2020/18579 would not have been able to identify their vehicle on the *ismyairbagsafe.com.au* website otherwise as being subject to a recall, and therefore may not have known that they were group members (**PRA 2020/18579 Toyota Group Members**).

37 Order 2 of the orders made on 22 May 2020 be varied, such that:

- (a) **4:00pm AEDT on 17 January 2022** be fixed as the date by which a PRA 2020/18579 Toyota Group Member may opt out of the proceeding (**ATGM Opt-Out Deadline**); and
- (b) any PRA 2020/18579 Toyota Group Member who wishes to opt out of this proceeding must, on or before the ATGM Opt-Out Deadline, deliver to the Sydney Registry of the Supreme Court of New South Wales, an opt out notice in the form of [Schedule B](#) to the ATGM Notice (defined in order 40 below) (**ATGM Opt Out Notice**).

38 If, on or before the ATGM Opt-Out Deadline, the solicitors for any party receive a notice purporting to be an ATGM Opt Out Notice referable to this proceeding, the solicitors must file that notice with the Court, within three (3) days of receipt of the notice by the solicitors and the notice shall be treated as an ATGM Opt Out Notice received by the Court at the time it was received by the solicitors.

39 The solicitors for the parties have leave to inspect the Court file and to copy any ATGM Opt Out Notices filed.

40 Pursuant to sections 175 and 176(1) of the Act the form and content of the notice to PRA 2020/18579 Group Members advising of the commencement of the

proceedings and their right to opt out of the proceedings before the ATGM Out-Out Deadline set out in Annexure D to these orders (**ATGM Notice**) is approved.

41 Pursuant to section 176(2) of the Act), notice of the ATGM Opt-Out Deadline be given to PRA 2020/18579 Group Members according to the following procedure:

- (a) the Covering Email is amended for the purpose of distribution to potential PRA 2020/18579 Group Members by inserting the following prominently at the beginning:

You are receiving this because you may be a group member in the Takata Airbag Class Action.

NOTE: You may have seen a public notice issued in May 2020 in relation to the Takata Airbag Class Action which did not identify you as a group member. However, in September 2020 recall notice PRA 2020/18579 was issued concerning Takata Airbags in certain Toyota Corolla vehicles (Model Years 2003-2005). Owners of these Toyota Corolla vehicles may be group members in the Takata Airbag Class Action. You should carefully read the settlement and opt out notice by visiting the links referred to below to understand your rights.

- (b) in the week commencing **18 October 2021** the solicitors for the Plaintiff will cause Epiq to send a copy of the Covering Email (as amended by order 41(a)) to all potential PRA 2020/18579 Group Members for whom Epiq holds a valid email address and whom Toyota has identified as being PRA 2020/18579 Group Members.

RETURN OF SECURITY:

The Court notes that:

- (A) On behalf of the Plaintiff, Regency Funding Pty ACN 619 012 421 has paid \$3,626,820 (the **Security Amount**) into Court as security for the Defendant's costs, by way of the following tranches:
- (i) \$200,000, on 4 May 2018;
 - (ii) \$250,000, on 23 October 2018;
 - (iii) \$1,588,410, on 31 December 2020; and
 - (iv) \$1,588,410, on 31 January 2021.
- (B) The parties have settled the proceeding, subject to Court approval, pursuant to a Settlement Deed between the parties dated 19 August 2021.

- 42 The Court orders that the Supreme Court of New South Wales will, forthwith, pay the Security Amount to the trust account for the plaintiff's solicitors, by transfer to:

Bank: Commonwealth Bank of Australia
 Account Name: Quinn Emanuel Urquhart & Sullivan Law Practice Trust
 Account
 BSB: 062000
 Account Number: 16035335

- 43 If the Settlement Deed is terminated pursuant to the terms of that deed, this proceeding is stayed until the Security Amount is repaid into Court on behalf of the Plaintiff as security for the Defendant's costs.

CONFIDENTIALITY

- 44 Pursuant to section 7 of the Court Suppression and Non-Publication Orders Act 2010 (NSW) and section 183 of the Act:

- (a) Item 1 at pages 1 to 95 of Confidential Exhibit DJS-2 to the affidavit of Damian Scattini affirmed 23 August 2021 (**Scattini Affidavit**) be kept confidential and not be disclosed to any person save for the parties (who, for the avoidance of doubt, do not include the Group Members for this purpose), their legal representatives and Funder;
 - (b) Item 2 at pages 96 to 99 of Confidential Exhibit DJS-2 to the Scattini Affidavit be kept confidential and not be disclosed to any person save for the Plaintiffs, their legal representatives and the Funder,
- other than by order of a Judge of the Court.

SIGNATURE

Signature of legal representative

Capacity

Solicitor

Date of signature

NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address 184, Phillip Street, Sydney

Postal address Supreme Court of NSW, GPO Box 3, Sydney

Telephone 1300 679 272

ANNEXURE A

Settlement Notice

Important Legal Notice

Takata Airbag Class Actions against Toyota, Subaru, Honda, BMW, Nissan and Mazda

NOTICE OF PROPOSED SETTLEMENT

1. Summary

This notice contains important information about the proposed settlement of the class action proceedings filed in the Supreme Court of New South Wales in relation to approximately 2 million Toyota, Lexus, Subaru, Honda, BMW, Nissan and Mazda branded vehicles on behalf of consumers affected by Takata airbag recalls (together, the **Takata Airbags Class Actions**). This notice does **not** relate to a similar class action brought in relation to Volkswagen branded vehicles affected by Takata airbag recalls.

Please read it carefully. If you are a Group Member in the Takata Airbag Class Actions, your legal rights will be affected by the proposed settlement. To work out whether you are a Group Member, see section 3 below.

If you do not understand this notice or you have any questions, you should contact the lawyers for the plaintiffs in the class actions, Quinn Emanuel, or seek independent legal advice. The Court is not able to answer questions about the proposed settlement.

PROPOSED SETTLEMENT

The parties to the Takata Airbag Class Actions have agreed to a proposed settlement of **\$52 million** and intend to shortly apply to the Court for approval of that settlement on behalf of the plaintiffs and group members. If the Court approves the settlement, eligible group members will be entitled to receive a settlement payment from the approved settlement sum after deduction of legal fees, administration costs and litigation funder's remuneration.

WHAT GROUP MEMBERS NEED TO DO

If you are a Group Member and want to claim a settlement payment you must **register by 4:00pm AEDT on 18 February 2022**. Instructions about how to register appear at section 8 below.

If you fail to register before the deadline and the proposed settlement is approved, you will lose: (a) your right to receive a settlement payment and (b) any rights you may have in relation to the circumstances giving rise to the Takata Airbag Class Actions.

CONTACT DETAILS

You can contact Quinn Emanuel for further information at takata@quinnemanuel.com

Note: if you owned or leased a Toyota Corolla vehicle (Model Years 2003-2005) affected by recall notice [PRA 2020/18579](#) issued in September 2020, then you should visit the settlement and opt out notice at: https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-

[Australia-Class-Action.aspx](#). If you do not/did not own a vehicle affected by recall notice PRA 2020/18579, you should not click the link and should continue reading this notice.

2. What are the Takata Airbag Class Actions about?

In summary, the Plaintiffs allege that, in importing, marketing and supplying certain vehicles fitted with specific Takata airbag/s in Australia, the Defendants:

- (a) failed to comply with the merchantable quality guarantee in the Trade Practices Act 1974 (Cth) or acceptable quality guarantee in the Australian Consumer Law;
- (b) engaged in misleading or deceptive conduct; and
- (c) engaged in unconscionable conduct,

as a result of which the Plaintiffs say that group members suffered economic loss, including out of pocket expenses.

The Defendants deny these allegations.

The key court documents filed in the Takata Airbag Class Actions can be found here:

https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx

3. Are you a Group Member?

You are a Group Member of the Takata Airbag Class Actions if you satisfy **each** of the following requirements:

- (a) at any time during the Relevant Period (set out below for each vehicle make), you acquired a Toyota, Lexus, Subaru, Honda, BMW, Nissan or Mazda branded vehicle in Australia that was fitted with a front driver or passenger airbag manufactured or supplied by Takata Corporation, and which has been the subject of a Takata safety recall; **and**
- (b) you still owned (or leased) that vehicle on 27 February 2018; and
- (c) you did not opt out of the Takata Airbag Class Actions, by completing and submitting an opt out notice by the Court-ordered opt out deadline.

The Relevant Period for each brand of vehicle is:

Make	Relevant Period
Toyota	1 November 2000 to 27 February 2018
Lexus	1 November 2000 to 27 February 2018
Subaru	1 January 2004 to 27 February 2018
Honda	1 January 2001 to 27 February 2018
BMW	1 January 1999 to 27 February 2018
Nissan	1 January 2000 to 27 February 2018
Mazda	1 January 2002 to 27 February 2018

Please see **section 11** of this notice for a list of affected models.

4. Overview of proposed settlement

Before the proposed settlement can take effect, it must be approved by the Supreme Court of New South Wales (see **section 9**).

Under the proposed settlement and with no admissions as to liability, the defendants will pay \$52 million (the **settlement sum**) to settle the Takata Airbag Class Actions inclusive of legal costs, expenses, disbursements, interest and any funding commission approved by the Court.

As part of the proposed settlement:

- (a) Regency intends to seek orders from the Court that it be paid \$13 million out of the settlement sum for funding the six separate representative proceedings (comprising the Takata Airbag Class Actions), being 25% of the settlement sum (see **section 6**);
- (b) the plaintiffs intend to seek an order for reimbursement of the reasonable legal costs incurred in the Takata Airbag Class Actions, estimated at approximately \$15,300,000 (see **section 7**);
- (c) the plaintiffs intend to apply to the Court for an order that the costs of administering the settlement be payable from the Settlement Sum (see **section 7**); and
- (d) the plaintiffs intend to apply to the Court for an order that they each be paid an amount of \$20,000.00 as reimbursement for the time and expenses incurred in their role as lead representatives in the Takata Airbag Class Actions.

It is proposed that the amounts set out above be deducted from the settlement sum prior to distribution of compensation to eligible group members. The effect of this is that the Court-approved funding commission and legal costs will be shared on a pro-rata basis by all eligible group members.

5. What settlement payment will you be entitled to?

The amount of the settlement payment to be paid to each individual group member cannot be determined at this stage as it will depend on a number of factors, including the amount of legal fees and funding commission ultimately approved by the Court to be paid from the settlement sum, and how many group members register to take part in the proposed settlement. Group member eligibility will be assessed in accordance with the court-approved scheme for determining group member entitlements (**settlement scheme**). If approved by the Court, the amount paid in respect of each eligible vehicle will be the same, regardless of brand or model of vehicle.

6. Payment to litigation funder

The plaintiffs in the proceedings are funded by a litigation funder, Regency Funding Pty Ltd (**Regency**). Regency intends to apply to the Court for an order for Regency to be paid \$13 million, being 25% of the settlement sum, or a lesser amount that the Court considers to be just. The purpose of this type of order (known as a 'common fund order') is to compensate Regency for funding the Takata Airbag Class Actions. The Court will decide whether it considers a 'common fund order' to be appropriate and, if so, the amount to be paid to Regency. This amount will be deducted from the settlement sum, prior to settlement payments being distributed to eligible group members.

7. Will Group Members be liable for legal costs?

The plaintiffs intend to apply to the Court for an order having the effect that the costs that the plaintiffs have incurred (and will incur) in conducting the Takata Airbag Class Actions for the benefit of all group members will be paid out of the overall settlement sum. This will include the costs of administering the settlement scheme (see **section 5**).

The plaintiffs estimate that the total costs that will be incurred in conducting the six Takata Airbag Class Actions, from the beginning of each proceeding up to the end of distribution of the settlement sum to all eligible group members, will be approximately **\$15,300,000**. This figure includes costs already incurred and estimated future costs relating to the settlement approval and management of the settlement scheme, and is subject to review by an independent costs expert. The Court will be asked to approve the payment of legal costs from the overall settlement sum. Group members are not responsible for any out of pocket costs.

Group Members do not need to pay any out of pocket costs to register for a settlement payment.

8. What Group Members must do

If you are a group member, there are three **(3)** options you must consider:

Option 1: If you support the proposed settlement and wish to be eligible for a settlement payment you **must** register your interest to participate in the settlement by completing and submitting a registration form online at [**insert Settlement Website URL**], or by requesting a PDF copy by emailing the Settlement Administrator at [**insert**] and returning a completed form to the Administrator by email. The deadline to register is **4:00pm AEDT 18 February 2022**.

Registrations received after 4:00pm AEDT on 18 February 2022 will not be accepted.

Option 2: If you oppose any of the terms of the proposed settlement and wish to object then you must complete the “**Notice of Objection**” which appears at **Schedule A** to this Notice. The deadline to object to the proposed settlement is **4:00pm AEDT on 18 February 2022**.

Please note: Even if you do object to the settlement, but wish to receive a settlement payment if the settlement is approved, you should still register in accordance with Option 1 in case your objection is overruled and the settlement takes effect.

Option 3: Do nothing in response to this notice. If you do not register by **4:00pm AEDT on 18 February 2022** and the proposed settlement is approved, you will lose: (a) your right to receive a settlement payment; and (b) any rights, including any rights to a settlement payment, you may have in relation to the circumstances giving rise to the Takata Airbag Class Actions.

If you are not sure what to do, you should contact Quinn Emanuel or seek independent legal advice.

9. Court approval hearing

The Court will hold a public hearing to decide whether the settlement is fair and reasonable and in the interests of Group Members. The hearing will be held at the **Supreme Court of New South Wales, Law Courts Building, Queen's Square, 184 Phillip Street, Sydney, NSW 2000**. It is not necessary for Group Members to attend this hearing in order to receive a settlement payment, but Group Members may attend if they wish and can contact Quinn Emanuel for details of when the hearing will take place.

You have a right to apply to be heard on the question of whether approval of the settlement should be granted. As noted above, if you wish to object you must complete the Notice of Objection appearing at Schedule A to this notice, and send a copy of that form to Quinn Emanuel by **4:00pm AEDT on 18 February 2022**. If you object to the settlement being approved, you or your lawyer may also present your position to the Court at the hearing where the Court will decide whether to approve the settlement.

If the Court approves the settlement, the settlement will be binding on all group members and will extinguish the claims of all group members (including all claims arising from or related to any circumstance or allegation giving rise to or referred to in the Takata Airbag Class Actions).

10. What happens if the settlement is not approved?

If the proposed settlement is not approved by the Court, the Takata Airbag Class Actions will continue and there will be no distribution of monies to Group Members unless the Plaintiffs are successful in the proceeding, or a further settlement is reached.

11. Affected vehicle models

The affected vehicle models in the Takata Airbag Class Actions are set out below:

Make	Models
Toyota	<p><u>Driver side airbag inflator recalls:</u> ECHO (NCP10, NCP13) (MY2002-2005) and RAV4 (ACA22, ACA23) (MY2003-2005).</p> <p><u>Passenger side airbag inflator recalls:</u> COROLLA ZZE121 (MY2003), ZZE122 (MY2001-2007); ZZE123 (MY2003-2005); COROLLA ZRE152 (Hatch) (MY2006-2013); Corolla ZRE152 (MY2006-2013); ZRE153 (Sedans) (MY2010-2013); Rukus AZE151 (MY2010-2015); AVENSIS ACM20 (MY2001-2003); ACM21 (MY2003-2009); YARIS (Hatch) NCP90 (MY2005-2011); NCP91 (MY2005-2011); YARIS (Sedan) NCP93 (MY2006-2016).</p>
Lexus	<p><u>Passenger side airbag inflator recalls:</u> SC430 (UZZ40 FN48Y) (MY2001-2006); SC430 (UZZ40 FN45Y) (MY2006-2010); IS250 (GSE20) (MY2005-2013); IS250C (GSE20) (MY2009-2014); IS350 (GSE21) (MY2010-2013); ISF (UES20, USE21) (MY2008-2014); LFA (LFA10) (MY2011-2012).</p>
Subaru	<p><u>Passenger side airbag inflator recalls:</u> Exiga (MY10-MY15); Forester (MY09-MY12); Impreza (MY04-MY11); Liberty (MY04-MY14); Outback (MY04-MY14); Tribeca (MY07-MY13); WRX (MY04-MY14), WRX STI (MY04-MY14).</p>
Honda	<p><u>Driver side airbag inflator recalls:</u> Accord (MY01-MY07); City (MY09-MY12); Civic (MY06-MY11); CR-V (MY02, MY07-MY11); Insight (MY10-MY13); Jazz (MY04-MY14); Jazz Hybrid (MY12-MY13); Legend (MY07-MY12); MDX (MY03-MY06).</p> <p><u>Passenger side airbag inflator recalls:</u> Accord (MY03-MY12); Accord Euro (MY03-MY15); City (MY09-MY12); Civic (MY01-MY11); CR-V (MY02-MY11); Insight (MY10-MY13); Jazz (MY03-MY14); Jazz Hybrid (MY13) Legend (MY07-MY12); MDX (MY03-MY06); Odyssey (MY04-MY08).</p>
BMW	<p><u>Driver side airbag inflator recalls:</u> 1 Series (E82, E87, E88, F20, F21); 2 Series (F22, F23, F45, F46); 3 Series (E46, E90, E91, E92, E93, F30, F31, F34); 4 Series (F32, F33, F36); 5 Series (E39, F07, F10, F11); 6 Series (F06, F12, F13); X1 (E84); X3, X4 (E83, F25, F26); X5, X6 (E53, E70, E71, F15, F16); X5M, X6M (F85, F86); M2, M3, M4 (F80, F82, F83, F87); M5 (F10); M6 (F06, F12, F13).</p> <p><u>Passenger side airbag inflator recalls:</u> 3 Series (E46); X5, X6 (E70, E71).</p>

Nissan	<p><u>Driver side airbag inflator recalls:</u> C11 Tiida (MY06-MY12); D40 Navara (MY07-MY15).</p> <p><u>Passenger side airbag inflator recalls:</u> Y61 Patrol (MY01-MY16); N16 Pulsar (MY01-05); D22 Navara (MY02-MY15); T30 X-Trail (MY01-07); J31 Maxima (MY03-08); C11 Tiida (MY06-MY12); D40 Navara (MY07-MY15).</p>
Mazda	<p><u>Driver side airbag inflator recalls:</u> Mazda 6 (MY2002–07); BT-50 (MY2006–11); B-Series (MY2004–06); RX-8 (MY2004–07).</p> <p><u>Passenger side airbag inflator recalls:</u> Mazda 6 (MY2002–10); Mazda 2 (MY2007–14); CX-7 (MY2006–09); CX-9 (MY2007–12); RX-8 (MY2003–11).</p>

IMPORTANT REMINDER REGARDING THE TAKATA AIRBAG RECALL

The Takata Airbag Class Actions are **not** a means for Group Members to get their recalled Takata airbags replaced. If you have a vehicle that has been recalled because it is fitted with a Takata Airbag(s) and you have not had the airbag(s) replaced, please urgently contact the manufacturer or your closest authorised dealer.

Getting your airbag replaced in accordance with the recall will not affect your ability to participate in the Takata Airbag Class Actions.

If you are unsure whether your vehicle is affected, you can check by entering your Vehicle Identification Number (**VIN**) at:

Toyota	https://www.toyota.com.au/recalls
Lexus	https://www.lexus.com.au/owners/recalls
Subaru	https://www.subaru.com.au/recall
Honda	https://www.honda.com.au/en/recall
BMW	https://www.recall.bmw.com.au/
Nissan	https://www.nissan.com.au/owners/recalls/takata-recall.html
Mazda	https://mazda.com.au/recalls/

SCHEDULE A***Takata Airbag Class Actions***

2017/00340824 Louise Haselhurst v Toyota Motor Corporation Australia Limited

2017/00353017 Kimley Whisson v Subaru (Aust) Pty Limited

2017/00378526 Akuratiya Kularathne v Honda Australia Pty Limited

2018/00009555 Owen Brewster v BMW Australia Ltd

2018/00009565 Jaydan Bond v Nissan Motor Co (Australia) Pty Limited

2018/00042244 Camilla Coates v Mazda Australia Pty Limited,

*(together, the **Takata Airbag Class Actions**).*

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

The person identified below:

1. is a group member in the Takata Airbag Class Actions; and
2. wishes to object to the proposed settlement of the Takata Airbag Class Actions.

A. Details of Objector

Name:

Telephone number:

Postal address:

Email address:

VIN:

Date vehicle purchased:

Do you still own your vehicle (yes/no)

If you no longer own your vehicle, date vehicle was disposed of:

Signed:

Date:

(If not the named group member, please state the relationship to the named group member:

.....

B. Grounds of objection

My objection to the proposed settlement is for the following reasons *[set out in the space below any submissions you wish to make, attach additional pages if necessary]*:

C. Evidence and submissions

Any Group Member who has provided written notice of an objection to the proposed settlement and/or any aspect of the proposed distribution of the Settlement Sum, including the proposed costs sharing order, and who wishes to rely on:

- (a) any evidence in support of their objection; and/or;
- (b) any written submissions in support of their objection (in addition to those submissions referred to at paragraph B above),

must serve on Quinn Emanuel that evidence and/or submissions (together with this completed form) by no later than **4:00pm AEDT on 18 February 2022**.

D. Attendance at settlement approval hearing

☐ I intend to appear before the Court at the hearing.

[If you intend to appear, please complete the following]:

☐ I will appear on my own behalf

☐ I will be represented by a lawyer: Name and contact email of lawyer:

☐ I do not intend to appear, but wish for my submissions to be considered in my absence

The group member has also registered as a group member: Yes / No (circle one)

The group member has read the “Notes for Objectors” below: Yes / No (circle one)

Notes for Objectors: By the Court’s orders made on [insert], Objectors are required to deliver to Quinn Emanuel a completed copy of this form together with any written submissions and any affidavit evidence the Objector wishes to rely on in support of the their objection to the proposed settlement by **4:00pm AEDT on 18 February 2022.**

ANNEXURE B

Covering Email

*** To be sent to all group members save for: Subaru Registrants, Toyota Registrants, Group Members who have signed LFA*

Dear [Full Name],

RE: Takata airbags class actions – Notice of Proposed Settlement

This email contains important information that may affect your legal rights. Please read it carefully and consider your options.

You are receiving this email because you have been identified as a person who may be a group member in class action proceedings filed in the Supreme Court of New South Wales against **Toyota, Lexus, Subaru, Honda, BMW, Nissan and Mazda** brought on behalf of consumers affected by Takata airbag recalls (**Takata airbags class actions**).

An in-principle agreement to settle the **Takata airbags class actions** has been reached between the parties (**proposed settlement**). The total agreed settlement sum is **\$52 million**, inclusive of all legal costs, costs of settlement administration and any funder's remuneration. Eligible group members will be entitled to receive a settlement payment if the proposed settlement is approved by the Court.

Access to the **Notice of Proposed Settlement** is available here: [insert URL to Settlement Website]

It includes information about:

1. how to determine whether you are an eligible group member;
2. if you are an eligible group member:
 - a. how to register to receive a settlement payment from the settlement ; and
 - b. your right to object to any terms of the proposed settlement.

To be eligible for a settlement payment, you **must** be a group member and you **must** register your claim. The deadline to register is **4:00pm AEDT on 18 February 2022**. If you are a group member and you do not register your claim, you will not be entitled to receive a settlement payment from the settlement.

The deadline to object to the proposed settlement is **4:00pm AEDT on 18 February 2022**.

If there is anything you do not understand or if you have any questions, you may seek independent legal advice or contact Quinn Emanuel at: takata@quinnemanuel.com. Any

questions you have concerning the matters contained in this notice should **not** be directed to the Court.

Note: if you owned or leased a Toyota Corolla vehicle (Model Years 2003-2005) affected by recall notice [PRA 2020/18579](#) issued in September 2020, then you should visit the settlement and opt out notice at :
https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx

This communication has been made pursuant to Court orders made [insert]].

Covering Email

*** To be sent Subaru Registrants; Toyota Registrants; Group Members who have signed LFA*

Dear [Full Name],

RE: Takata airbags class actions – Notice of Proposed Settlement

This email contains important information that may affect your legal rights. Please read it carefully and consider your options.

You are receiving this email because you have been identified as a person who may be a group member in class action proceedings filed in the Supreme Court of New South Wales against **Toyota, Lexus, Subaru, Honda, BMW, Nissan and Mazda** brought on behalf of consumers affected by Takata airbag recalls (**Takata airbags class actions**).

An in-principle agreement to settle the **Takata airbags class actions** has been reached between the parties (**proposed settlement**). The total agreed settlement sum is **\$52 million**, inclusive of all legal costs, costs of settlement administration and any funder's remuneration. Eligible group members will be entitled to receive a settlement payment if the proposed settlement is approved by the Court.

Access to the **Notice of Proposed Settlement** is available here: [insert URL to Settlement Website]

It includes information about:

1. how to determine whether you are an eligible group member;
2. if you are an eligible group member:
 - a. how to register to receive a settlement payment from the settlement ; and
 - b. your right to object to any terms of the proposed settlement.

To be eligible for a settlement payment, you **must** be a group member and you **must** register your claim. The deadline to register is **4:00pm AEDT on 18 February 2022**. If you are a group member and you do not register your claim, you will not be entitled to receive a settlement payment from the settlement.

Note: If you have previously either: (1) signed a Litigation Funding Agreement with Regency Funding; or (2) provided your details as part of the questionnaire process in respect Toyota or Subaru vehicles, your intention to participate in the settlement has already been registered. However, in order for the Administrator to determine whether you are eligible to receive a settlement payment, the Administrator will require further details from you about

your claim. You can provide those details by completing the online form available at [insert URL to Settlement Website]

If you would like to object to the settlement, the deadline to object to the proposed settlement is **4:00pm AEDT on 18 February 2022**.

If there is anything you do not understand or if you have any questions, you may seek independent legal advice or contact Quinn Emanuel at takata@quinnemanuel.com. Any questions you have concerning the matters contained in this notice should not be directed to the Court.

Note: if you owned or leased a Toyota Corolla vehicle (Model Years 2003-2005) affected by recall notice [PRA 2020/18579](#) issued in September 2020, then you should visit the settlement and opt out notice at https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx

This communication has been made pursuant to Court orders made [insert date].

ANNEXURE C

Newspaper Advertisement

The Supreme Court of New South Wales has ordered that this notice be published to notify group members of the Takata Airbag Class Actions of a proposed settlement that has been reached between the parties.

The Takata Airbag Class Actions refers to six separate proceedings that were commenced on behalf of consumers in relation to approximately 2 million **Toyota, Lexus, Subaru, Honda, BMW, Nissan** and **Mazda** branded vehicles affected by the Takata airbag recalls.

Proposed Settlement

The parties to the Takata Airbag Class Actions have agreed on terms for a proposed settlement of **\$52 million**, inclusive of all legal costs, costs of settlement administration and any funder's remuneration. If the settlement is approved by the Court, eligible group members will be entitled to receive a settlement payment. The **deadline to register** for a settlement payment is **4:00pm AEDT on 18 February 2022**. Group Members are also entitled to object to the terms of settlement. The **deadline to object** is **4:00pm AEDT on 18 February 2022**.

To view the **full version** of the court-approved settlement notice in the Takata Airbag Class Actions please visit: [insert URL to Settlement Website]. That notice includes important information regarding:

1. how to identify whether you are a group member;
2. how eligible group members can register their entitlement to receive a settlement payment;
3. the deductions for legal fees, administration costs and litigation funder's remuneration to be made from the total settlement sum, prior to its distribution to registered group members (subject to the Court's approval);
4. how eligible group members can object to the terms of settlement; and
5. how group member's rights will be affected if no action is taken before the registration deadline.

If there is anything you do not understand or if you have any questions, you may seek independent legal advice or contact Quinn Emanuel at takata@quinnemanuel.com

Note 1: If you owned or leased a Toyota Corolla vehicle (Model Years 2003-2005) affected by recall notice [PRA 2020/18579](#) issued in September 2020, then you should also visit the settlement and opt out notice at https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx. If you do not/did not own a vehicle affected by recall notice PRA 2020/18579, you should not visit the link and should continue reading this notice.

Note 2: This advertisement does **not** relate to a similar class action brought in relation to Volkswagen branded vehicles affected by Takata airbag recalls.

ANNEXURE D

ATGM Notice

Important Legal Notice

Takata Airbag Class Action against Toyota

This notice relates only to certain individuals who owned or leased a Toyota Corolla vehicle (Model Years 2003-2005) affected by recall notice PRA 2020/18579 issued in September 2020.

If you do not/did not own a vehicle affected by recall PRA 2020/18579, you should visit the general settlement notice at this link [insert URL to Settlement Website].

1. Summary

This notice contains important information about the rights of a certain subgroup of group members to Toyota Proceedings (defined below), including the **right to opt-out** of the Toyota Proceedings and **rights relating to a proposed settlement** that has been reached between the parties to the Takata Airbag Class Actions (defined below).

Who does this notice relate to? This notice **ONLY** relates to you if, as at 27 February 2018, you owned or leased a recalled Toyota Corolla vehicle (Model Years 2003-2005) fitted with a Takata airbag/s that was subject to recall notice PRA 2020/18579 issued on 29 September 2020. If you fall within this subgroup of group members to the Toyota Proceedings, you should **read this notice carefully as it contains important information that may affect your legal rights**. If you do not understand this notice or you have any questions, you should contact the lawyers for the Plaintiff in the Toyota Proceedings, Quinn Emanuel, or seek independent legal advice. The Court is not able to answer questions about the proposed settlement.

Defined terms:

In this notice:

“Takata Airbag Class Actions” refers collectively to the separate class action proceedings filed in the Supreme Court of New South Wales in relation to approximately 2 million Toyota (including Lexus), Subaru, Honda, BMW, Nissan and Mazda branded vehicles on behalf of consumers affected by Takata airbag recalls.

“Toyota Proceedings” refers to a subset of the Takata Airbag Class Actions filed in relation to Toyota and Lexus branded vehicles only.

RIGHT TO OPT OUT

Group members of the Toyota Proceedings whose vehicles were subject to PRA 2020/18579 issued on 29 September 2020 have the right to **opt out** of the Toyota Proceedings. Information about your right to opt out appears at section 8 of this notice.

PROPOSED SETTLEMENT

A proposed settlement has been reached in respect of the Takata Airbags Class Actions for \$52 million.

The parties to the Takata Airbag Class Actions intend to shortly apply to the Court for approval of that settlement on behalf of the Plaintiffs and group members (who have not exercised their right to opt out). If the Court approves the settlement, eligible group members will be entitled to receive a settlement payment from the approved settlement sum after deduction of legal fees, administration costs and litigation funder's remuneration.

WHAT GROUP MEMBERS NEED TO DO

If you are a group member whose vehicles were subject to PRA 2020/18579 and want to:

- (a) **opt out**, you must do so before **4:00pm AEDT on 17 January 2022**. Instructions about how to opt out appear at section 8 below.; or
- (b) **claim a settlement payment**, you must **register before 4:00pm AEDT on 18 February 2022**. Instructions about how to register appear at section 7 below.

If you fail to register before the deadline and the proposed settlement is approved, you will lose: (a) your right to receive a settlement payment and (b) any rights you may have in relation to the circumstances giving rise to the Toyota Proceedings.

CONTACT DETAILS

You can contact Quinn Emanuel for further information at takata@quinnemanuel.com

2. What are the Toyota Proceedings about?

In summary, the Plaintiff alleges that, in importing, marketing and supplying certain Toyota and Lexus vehicles fitted with specific Takata airbag/s in Australia, the Defendant:

- (a) failed to comply with the merchantable quality guarantee in the *Trade Practices Act 1974* (Cth) or acceptable quality guarantee in the Australian Consumer Law;
- (b) engaged in misleading or deceptive conduct; and
- (c) engaged in unconscionable conduct,

as a result of which the Plaintiff says that group members suffered economic loss, including out of pocket expenses.

The Defendant denies these allegations.

The key court documents filed in the Toyota Proceedings can be found here:

https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx

3. Overview of proposed settlement

Before the proposed settlement can take effect, it must be approved by the Supreme Court of New South Wales.

Under the proposed settlement and with no admissions as to liability, the defendants will pay \$52 million (the settlement sum) to settle the Takata Airbag Class Actions inclusive of legal costs, expenses, disbursements, interest and any funding commission approved by the Court.

As part of the proposed settlement:

- (a) Regency intends to seek orders from the Court that it be paid \$13 million out of the settlement sum for funding the six separate representative proceedings (comprising the Takata Airbag Class Actions), being 25% of the settlement sum (see **section 5**) ;
- (b) the plaintiffs intend to seek an order for reimbursement of the reasonable legal costs incurred in the Takata Airbag Class Actions, estimated at approximately \$15,300,000 (see **section 6**);
- (c) the plaintiffs intend to apply to the Court for an order that the costs of administering the settlement be payable from the Settlement Sum (see **section 6**); and
- (d) the plaintiffs intend to apply to the Court for an order that they each be paid an amount of \$20,000.00 as reimbursement for the time and expenses incurred in their role as lead representatives in the Takata Airbag Class Actions.

It is proposed that the amounts set out above be deducted from the settlement sum prior to distribution of compensation to eligible group members. The effect of this is that the Court-approved funding commission and legal costs will be shared on a pro-rata basis by all eligible group members.

4. What settlement payment will you be entitled to?

The amount of the settlement payment to be paid to each individual group member cannot be determined at this stage as it will depend on a number of factors, including the amount of legal fees and the funding commission ultimately approved by the Court to be paid from the settlement sum, and how many group members register to take part in the proposed settlement. Group member eligibility will be assessed in accordance with the court-approved scheme for determining group member entitlements (**settlement scheme**). If approved by the Court, the amount paid in respect of each eligible vehicle will be the same for the Takata Airbag Class Actions, regardless of brand or model of vehicle.

5. Payment to litigation funder

The Plaintiff in the proceeding is funded by a litigation funder, Regency Funding Pty Ltd (**Regency**). Regency intends to apply to the Court for an order for Regency to be paid \$13 million, being 25% of the settlement sum, or a lesser amount that the Court considers to be just. The purpose of this type of order (known as a 'common fund order') is to compensate Regency for funding the Takata Airbag Class Actions. The Court will decide whether it considers a 'common fund order' to be appropriate and, if so, the amount to be paid to Regency. This amount will be deducted from the settlement sum, prior to settlement payments being distributed to eligible group members.

6. Will Group Members be liable for legal costs?

The Plaintiff intends to apply to the Court for an order having the effect that the costs that the Plaintiff has incurred (and will incur) in conducting the Takata Airbag Class Actions for the benefit of all group members will be paid out of the overall settlement sum. This will include the costs of administering the settlement scheme (see **section 4**).

The Plaintiff estimates that the total costs that will be incurred in conducting the six Takata Airbag Class Actions, from the beginning of each proceeding up to the end of distribution of the settlement sum to all eligible group members, will be approximately **\$15,300,000**. This figure includes costs already incurred and estimated future costs relating to the settlement approval and management of the settlement scheme, and is subject to review by an independent costs expert. The Court will be asked to approve the payment of legal costs from the overall settlement sum. Group members are not responsible for any out of pocket costs.

Group members do not need to pay any out of pocket costs to register for a settlement payment.

7. What Group Members must do

In a class action, the Plaintiff does not need to seek the consent of group members to commence a claim on their behalf. Group members can cease to be a member, however, by opting out of the class action. The deadline to opt out of the Toyota Proceedings is **4:00pm AEDT on 17 January 2022** (the **Opt-Out Deadline**). Unless you opt out before this deadline, you will be bound by any outcome reached in the Takata Airbag Class Actions, which includes the Toyota Proceedings.

If you are a group member of the Toyota Proceedings with a vehicle that was subject to PRA 2020/18579, there are four **(4)** options you must consider:

Option 1: If you support the proposed settlement and wish to be eligible for a settlement payment you **must** register your interest to participate in the settlement by completing and submitting a registration form online at [insert URL to

Settlement Website], or by requesting a PDF copy by emailing the Settlement Administrator at [insert] and returning a completed form to the Administrator by email. The deadline to register is **4:00pm AEDT on 18 February 2022**.

Registrations received after 4:00pm AEDT on 18 February 2022 will not be accepted.

Option 2: If you oppose any of the terms of the proposed settlement and wish to object then you must complete the “**Notice of Objection**” which appears at **Schedule A** to this Notice. The deadline to object to the proposed settlement is **4:00pm AEDT on 18 February 2022**.

Please note: Even if you do object to the settlement, but wish to receive a settlement payment if the settlement is approved, you should still register in accordance with Option 1 in case your objection is overruled and the settlement takes effect.

Option 3: Do nothing in response to this notice. If you do not register by **4:00pm AEDT on 18 February 2022** and the proposed settlement is approved, you will lose: (a) your right to receive a settlement payment and (b) any rights, including any rights to a settlement payment, you may have in relation to the circumstances giving rise to the Toyota Proceedings.

Option 4: If you do not wish to be part of the Toyota Proceedings, you should submit an “Opt Out Notice” to the Sydney Registry of the Supreme Court of New South Wales. If you are a group member and you do not submit an Opt Out Notice, you will be bound by the proposed settlement.

A copy of the “**Opt Out Notice**” appears at **Schedule B** to this Notice. The Opt Out Notice can also be accessed here:

https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx

8. What is Opt Out?

As set out in section 7 above, in a class action, the Plaintiff does not need to seek the consent of group members to commence a claim on their behalf. Group members can cease to be a member, however, by opting out. An Opt-Out process has already been run for the majority of group members to the Takata Airbag Class Actions. However, group members with vehicles that were subject to recall notice PRA 2020/18579 were not previously notified of the right to Opt-Out. The Court has therefore ordered that group members whose vehicles were subject to recall notice PRA 2020/18579 are entitled to Opt-Out of the Toyota Proceedings by the Opt-Out Deadline of **4:00pm AEDT on 17 January 2022**.

Accordingly, if you do not wish to remain as a group member in the Toyota Proceedings (and therefore preserve your right to pursue a separate claim against Toyota), you must opt out of the class action by completing and submitting an “**Opt Out Notice**” (set out at **Schedule B** to this Notice) to the Sydney Registry of the NSW Supreme Court before the Opt-Out Deadline.

If you opt out of the Toyota Proceedings:

- (a) you will not be permitted to participate in the distribution of any damages awarded or the proposed settlement in the Takata Airbag Class Actions referred to above; and
- (b) you will be able to commence separate legal proceedings in relation to the matters the subject of the Toyota Proceedings on your own behalf if you so wish.

Opt Out Notices must be submitted directly to the Sydney Registry of the NSW Supreme Court in hard copy (at the address appearing on the Opt Out Notice) before the **Opt-Out Deadline**.

Opt Out Notices received after **4:00pm AEDT on 17 January 2022** will not be accepted, and you will remain as a group member in the Toyota Proceedings and be bound by any judgment or settlement entered in relation to the Toyota Proceedings.

9. Court approval hearing

The Court will hold a public hearing to decide whether the settlement is fair and reasonable and in the interests of group members. The hearing will be held at the **Supreme Court of New South Wales, Law Courts Building, Queen's Square, 184 Phillip Street, Sydney, NSW 2000**. It is not necessary for group members to attend this hearing in order to receive a settlement payment, but group members may attend if they wish and can contact Quinn Emanuel for details of when the hearing will take place.

You have a right to apply to be heard on the question of whether approval of the settlement should be granted. As noted above, if you wish to object you must complete the Notice of Objection appearing at Schedule A to this notice, and send a copy of that form to Quinn Emanuel by **4:00pm AEDT on 18 February 2022**. If you object to the settlement being approved, you or your lawyer may also present your position to the Court at the hearing where the Court will decide whether to approve the settlement.

If the Court approves the settlement, the settlement will be binding on all group members and will extinguish the claims of all group members (including all claims arising from or related to any circumstance or allegation giving rise to or referred to in the Takata Airbag Class Actions).

10. What happens if the settlement is not approved?

If the proposed settlement is not approved by the Court, the Takata Airbag Class Actions, which includes the Toyota Proceedings will continue and there will be no distribution of monies to group members unless the Plaintiff is successful in the proceeding, or a further settlement is reached.

11. Affected vehicle models

The affected vehicle models in the Toyota Proceedings to which this notice applies is set out below:

Make	Models
Toyota	<u>Passenger side airbag inflator recalls</u> : ZZE122 (MY2003-2005); ZZE123 (MY2003-2005);

IMPORTANT REMINDER REGARDING THE TAKATA AIRBAG RECALL

The Toyota Proceedings are **not** a means for group members to get their recalled Takata airbags replaced. If you have a vehicle that has been recalled because it is fitted with a Takata Airbag(s) and you have not had the airbag(s) replaced, please urgently contact the manufacturer or your closest authorised dealer.

Getting your airbag replaced in accordance with the recall will not affect your ability to participate in the Toyota Proceedings.

If you are unsure whether your vehicle is affected, you can check by entering your Vehicle Identification Number (VIN) at:

Toyota <https://www.toyota.com.au/recalls>

SCHEDULE A***Takata Airbag Class Actions***

2017/00340824 Louise Haselhurst v Toyota Motor Corporation Australia Limited

2017/00353017 Kimley Whisson v Subaru (Aust) Pty Limited

2017/00378526 Akuratiya Kularathne v Honda Australia Pty Limited

2018/00009555 Owen Brewster v BMW Australia Ltd

2018/00009565 Jaydan Bond v Nissan Motor Co (Australia) Pty Limited

*2018/00042244 Camilla Coates v Mazda Australia Pty Limited,
(together, the **Takata Airbag Class Actions**).*

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

The person identified below:

1. is a group member in the Takata Airbag Class Actions; and
2. wishes to object to the proposed settlement of the Takata Airbag Class Actions.

A. Details of Objector

Name:

Telephone number:

Postal address:

Email address:

VIN:

Date vehicle purchased:

Do you still own your vehicle (yes/no)

If you no longer own your vehicle, date vehicle was disposed of:

Signed:

Date:

(If not the named group member, please state the relationship to the named group member:

.....

B. Grounds of objection

My objection to the proposed settlement is for the following reasons *[set out in the space below any submissions you wish to make, attach additional pages if necessary]*:

C. Evidence and submissions

Any Group Member who has provided written notice of an objection to the proposed settlement and/or any aspect of the proposed distribution of the Settlement Sum, including the proposed costs sharing order, and who wishes to rely on:

- (a) any evidence in support of their objection; and/or;
- (b) any written submissions in support of their objection (in addition to those submissions referred to at paragraph B above),

must serve on Quinn Emanuel that evidence and/or submissions (together with this completed form) by no later than **4:00pm AEDT on 18 February 2022**.

D. Attendance at settlement approval hearing

☐ I intend to appear before the Court at the hearing.

[If you intend to appear, please complete the following]:

☐ I will appear on my own behalf

☐ I will be represented by a lawyer: Name and contact email of lawyer:

☐ I do not intend to appear, but wish for my submissions to be considered in my absence

The group member has also registered as a group member: Yes / No (circle one)

The group member has read the “Notes for Objectors” below: Yes / No (circle one)

Notes for Objectors: By the Court’s orders made on [insert], Objectors are required to deliver to Quinn Emanuel a completed copy of this form together with any written submissions and any affidavit evidence the Objector wishes to rely on in support of the their objection to the proposed settlement by **4:00pm AEDT on 18 February 2022.**

SCHEDULE B

Form 115 (version 2)
UCPR 58.2

OPT OUT NOTICE**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
List	General (Class Action)
Registry	Sydney Registry
Case number	2017/00340824

TITLE OF PROCEEDINGS

Plaintiff	Louise Haselhurst
Defendant	Toyota Motor Corporation Australia Limited

FILING DETAILS

Filed for	[name] , person opting out of representative proceedings
Legal representative	[solicitor] [firm]
Legal representative reference	[reference number]
Contact name and telephone	[name] [telephone]
Contact email	[email address]

OPT OUT NOTICE

Name of person opting out

Address of person opting out

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
- 3 To the extent that I have a claim against the defendant(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

SIGNATURE

Signature of legal representative

Signature of or on behalf of
person opting out if not legally
represented

Capacity

[eg solicitor, authorised officer of person opting out,
person opting out]

Date of signature

NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members file this form in the registry of the court at the address below.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272