

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 10 September 2021**

2017/00353017-001 / Statement of Claim: Kimley Lloyd Whisson v SUBARU (AUST) PTY LTD

His Honour handed down his judgment:

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 to these reasons.

Justice D Hammerschlag

Signed

Date

Form 44 (version 3)
UCPR 36.1A

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	2017/00353017

TITLE OF PROCEEDINGS

Plaintiff	Kimley Lloyd Whisson
Defendant	Subaru (Aust) Pty Ltd

PREPARATION DETAILS

Prepared for	Kimley Lloyd Whisson , 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 2021**.
- 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.

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.

RETURN OF SECURITY:

The Court notes that:

- (A) On behalf of the Plaintiff, Regency Funding Pty ACN 619 012 421 has paid \$2,200,000 (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 31 October 2018;
 - (iii) \$250,000, on 5 June 2019;
 - (iv) \$1,000,000, on 18 November 2020; and
 - (v) \$500,000, on 29 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.
- 36 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
- 37 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

- 38 Pursuant to section 7 of the Court Suppression and Non-Publication Orders Act 2010 (NSW) and section 183 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 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: [07435-00001/12948716.1](https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-</p>
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[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 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 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>

Passenger side airbag inflator recalls: Mazda 6 (MY2002–10); Mazda 2 (MY2007–14); CX-7 (MY2006–09); CX-9 (MY2007–12); RX-8 (MY2003–11).

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/>

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 date].

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.