



Issued: 29 June 2022 8:17 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2017/00353017

TITLE OF PROCEEDINGS

First Plaintiff	Kimley Lloyd Whisson
First Defendant	SUBARU (AUST) PTY LTD ABN 95000312792

DATE OF JUDGMENT/ORDER

Date made or given	29 June 2022
Date entered	29 June 2022

TERMS OF JUDGMENT/ORDER

Ex tempore judgment delivered

VERDICT, ORDER OR DIRECTION

Her Honour, Rees J, makes the following orders and directions in accordance with the Minutes of Order as amended by her Honour, initialled, dated today and placed with the papers:

THE COURT NOTES THAT:

(A) In these orders:

"Group Members" means all persons who fall within the group definitions in any of the Takata Airbag Class Actions and, for the avoidance of any doubt, does not include any persons who opted out of the Takata Airbag Class Actions or who opt out pursuant to leave at any subsequent time.

"Plaintiffs" means, in respect of proceeding:

- (a) 2017/00340824, Louise Haselhurst;
- (b) 2017/00353017, Kimley Whisson;
- (c) 2017/00378526, Akuratiya Kularathne;
- (d) 2018/00009555, Owen Brewster;
- (e) 2018/00009565, Jaydan Bond; and
- (f) 2018/00042244, Camilla Coates.

"Defendants" means, in respect of proceeding:

- (a) 2017/00340824, Toyota Motor Corporation Australia Limited;
- (b) 2017/00353017, Subaru (Aust) Pty Limited;

- (c) 2017/00378526, Honda Australia Pty Limited;
- (d) 2018/00009555, BMW Australia Ltd;
- (e) 2018/00009565, Nissan Motor Co (Australia) Pty Limited; and
- (f) 2018/00042244, Mazda Australia Pty Limited.

“Related Costs Proceedings” means the following proceedings:

- (a) BMW Australia Ltd v Owen Brewster, High Court of Australia proceedings S152/2019;
- (b) Louise Haselhurst v Toyota Motor Corporation Australia Limited t/as Toyota Australia, NSW Court of Appeal proceedings 2019/403346;
- (c) Owen Brewster v BMW Australia Ltd, NSW Court of Appeal proceedings 2020/274909; and
- (d) Louise Haselhurst v Toyota Motor Corporation Australia Limited t/as Toyota Australia, Costs Assessment 2021/6228.

"Takata Airbag Class Actions" 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.

THE COURT ORDERS BY CONSENT IN THE TAKATA AIRBAG CLASS ACTIONS THAT:

Consolidation of Proceedings

1 Pursuant to rule 28.5 of the Uniform Civil Procedure Rules 2005 (NSW) (UCPR), the separate Takata Airbag Class Actions are consolidated into a single proceeding (the Settled Takata Proceeding).

Intervention of Funder

1A Regency Funding Pty Ltd ACN 619 012 421 (Funder) be granted leave to intervene in the Settled Takata Proceeding for the purpose of seeking order 8(d) below.

Settlement of Proceedings

2 Pursuant to s 173 of the Civil Procedure Act 2005 (NSW) (the Act), the settlement of the Settled Takata Proceeding is approved on the terms set out in:

- (a) the Deed of Settlement and Release dated 19 August 2021 (Settlement Deed); and
 - (b) the Settlement Distribution Scheme dated 2 June 2022 (SDS),
- subject to these orders.

3 Pursuant to section 183 of the Act, the Plaintiffs are authorised, nunc pro tunc, to enter into the Settlement Deed for, and on behalf of all Group Members.

4 Pursuant to s 179 of the Act, the persons affected and bound by the Settlement Deed and the SDS are the Plaintiffs, the Defendants, the Group Members and Funder Regency Funding Pty Ltd (ACN 619 012 421) (Funder).

Administration of Settlement

5 Pursuant to ss 173 and/or 183 of the Act, Epiq Systems Australia Pty Ltd be appointed as administrator of the SDS to act in accordance with the SDS and these orders subject to any direction from the Court, and to have the powers and immunities conferred by the SDS on the administrator, subject to any direction of the Court (Settlement Administrator).

6 The Settlement Administrator is granted liberty to relist the Settled Takata Proceeding for the purpose of seeking orders consequential to or in connection with the Settlement Deed and/or the SDS.

7 The Settlement Administrator is joined as a party to the Settled Takata Proceeding pursuant to r 6.24 of the UCPR for the limited purpose of exercising the liberty granted under order 6 above.

Deductions from the Total Settlement Sum

8 Pursuant to section 173 of the Act, and for the purposes of the SDS, the Court approves the following deductions from the Total Settlement Sum under the SDS:

(a) the Plaintiffs' legal costs, comprising the Plaintiffs' reasonable costs and disbursements incurred, or estimated to be incurred in the conduct of the Settled Takata Proceeding, including:

(i) \$15,570,741.05 (inclusive of GST) in costs incurred up to 31 March 2022, to be paid to the Funder; and

(ii) \$536,181.25 (inclusive of GST), in costs incurred, or estimated to be incurred, between 1 April 2022 and 29 June 2022 (being the date of the hearing of the Approval Application), to be paid to Quinn Emanuel; and

(b) \$20,000 to each of the Plaintiffs for the time spent and expenditure reasonably incurred in the Settled Takata Proceeding for the benefit of the Group Members; and

(c) up to \$2,500,856.60 (inclusive of GST) to be paid to Quinn Emanuel or the Settlement Administrator (as the case may be) for costs and disbursements incurred in connection with the administration of the SDS;

(d) pursuant to s 173(1) or (2) of the Act, or pursuant to the general law and in the equitable jurisdiction of the Court, a funding commission to be paid to the Funder, in the amount of \$ 13 million.

(together, the Settlement Deductions).

Calculation and distribution of Group Member payments

9 The Settlement Administrator is to calculate the Group Member Settlement Payment (as that term is defined in the SDS) in accordance with clause 12.3 of the SDS).

10 The Group Member Settlement Payments are to be paid from the Total Settlement Sum after the Settlement Deductions have been deducted.

Confidentiality Orders

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

(a) In the affidavit of Damian John Scattini affirmed 10 June 2022 (Scattini Affidavit):

i. paragraphs 331; 332; 333; 334; 336; 337(b); 337(c); 337(d); 337(e); 337(g); 337(h); 337(i); 337(j); 337(p); 337(r); 337(s); 337(t); 337(u); 337(v) and 337(w); 338; 347; 348; 351; 354; 355; 356; and 357;

ii. paragraph 335, line six, second sentence onwards;

iii. paragraph 337, line six, second sentence;

iv. paragraph 337(a), line four, second sentence;

v. paragraph 337(f), line three, second sentence;

vi. paragraph 337(n), line four, third sentence;

vii. paragraph 337(q), line three, second sentence; and

(b) Confidential Exhibit DS-4 to the affidavit of Damian John Scattini affirmed 15 June 2022 (second Scattini Affidavit),

be kept confidential and not be disclosed to any person save the Judge with the carriage of the matter (and officers of the Court to whom it is necessary to disclose the evidence) until further order on the grounds that the order is necessary to prevent prejudice to the proper administration of justice.

12 Pursuant to section 10 of the Suppression Act:

- (a) Confidential Exhibit DS-2 (other than pages 1 to 95 and 393-394); and
(b) Confidential Exhibit DS-3 to the Scattini Affidavit,

be kept confidential and not be disclosed to any person save the Judge with the carriage of the matter (and officers of the Court to whom it is necessary to disclose the evidence) until 7 days from the date of any order approving the proposed settlement under s 173 of the Civil Procedure Act 2005 (NSW) in the Takata Class Action.

13 Any party wishing to maintain the confidentiality of material referred to in order 2 must make such an application within 7 days from the date of any order approving the proposed settlement under s 173 of the Civil Procedure Act 2005 (NSW) in the Takata Class Action.

Late registrants

14 The persons identified at pages 393-394 of Exhibit DS-2 are deemed to have registered by the Registration Deadline (as that term is defined in the SDS).

Dismissal and costs

15 All costs orders in the Settled Takata Proceeding and any Related Costs Proceedings (as that term is defined in the Settlement Deed) are vacated.

16 The Settlement Administrator is to notify the Court by way of affidavit once the SDS has been completed.

17 Upon the filing of the affidavit referred to at order 16 above, the Settled Takata Proceeding and (except to the extent that they have already been finally determined) the Related Costs Proceedings be dismissed with no order as to costs.

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

19 Liberty to apply on three days' notice.

SEAL AND SIGNATURE



Signature Chris D'Aeth
Capacity Principal Registrar
Date 29 June 2022

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff
Name Kimley Lloyd Whisson
Address 25 Modillion Avenue
 SHELLEY WA 6148

Telephone
Fax
E-mail
Client reference

Legal representative

Name	Damian Scattini
Practicing certificate number	3028
Address	Level 15 111 Elizabeth Street SYDNEY NSW 2000
DX address	
Telephone	(02)91463888
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Email	damianscattini@quinnemanuel.com
Electronic service address	damianscattini@quinnemanuel.com

FURTHER DETAILS ABOUT Defendant(s)**First Defendant**

Name	SUBARU (AUST) PTY LTD ABN 95000312792
Address	4 Burbank Place BAULKHAM HILLS NSW 2153