



S-148 694

NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN



PLAINTIFF

AND

TAKATA CORPORATION,
TK HOLDINGS, INC.,
HIGHLAND INDUSTRIES, INC.,
HONDA MOTOR COMPANY, LTD.,
AMERICAN HONDA MOTOR COMPANY, INC. and
HONDA CANADA INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- © if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

The Representative Plaintiff

1. [REDACTED]
2. In or about 2010 the Plaintiff purchased a 2003 Honda Accord in British Columbia. According to the vehicle identification number the Plaintiff's 2003 Honda Accord was manufactured in the United States.
3. In or about August 2014 the Plaintiff received a recall notice from the Defendant, Honda Canada Inc., ("Honda Canada") notifying that her passenger side airbag for the 2003 Honda Accord needed to be replaced due to a defect which could cause serious and potential fatal injury to vehicle occupants.

The Defendants

4. The Defendant, Takata Corporation ("Takata"), is a company duly incorporated pursuant

to the laws of Japan and has an address for service at 12-31, Akasaka, 2-Chome, Minato-Ku, Tokyo, 107-8508 Japan.

5. The Defendant, TK Holdings, Inc. ("TK Holdings"), is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, CSC Lawyers Incorporating Services, at 601 Abbot Road, East Lansing, Michigan, United States of America.
6. The Defendant, Highland Industries, Inc. ("Highland"), is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, Corporation Service Company, at 327 Hillsborough Street, Raleigh, North Carolina, United States of America.
7. The Defendant, Honda Motor Company, Ltd. ("Honda Motor"), is a company duly incorporated pursuant to the laws of Japan and has an address for service at 1-1, 2-Chome, Minami-Aoyama, Tokyo, 107-8556 Japan.
8. The Defendant, American Honda Motor Company, Inc. ("American Honda"), is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, C T Corporation System, at 818 West Seventh Street 2nd Floor, Los Angeles, California, United States of America.
9. The Defendant, Honda Canada, is an extra provincial company duly incorporated pursuant to the laws of Canada under number 387526-1 and has an attorney for service of process at 2900 - 550 Burrard Street, Vancouver, British Columbia, Canada.
10. At all material times to the cause of action herein, the Defendant, Takata, is a specialized supplier of automotive safety systems that designs, manufactures, tests, markets, distributes and/or sells vehicle airbags in North America and elsewhere. The Defendant, Takata, is a vertically-integrated company and manufactures component parts in its own facilities.
11. At all material times to the cause of action herein, the Defendant, TK Holdings, is an

American subsidiary of the Defendant, Takata, which designs, manufactures, tests, markets, sells and/or distributes vehicle airbags in North America and elsewhere. The Defendant, TK Holdings, both directly and through subsidiaries, owns and operates fifty-six manufacturing plants in twenty countries and manufactures airbags at issue in the within action.

12. At all material times to the cause of action herein, the Defendant, Highland, is an American subsidiary of the Defendant, Takata, which manufactures industrial and automotive textile products including, *inter alia*, airbag fabrics for the automotive airbag industry in North America and elsewhere.
13. The Defendants, Takata, TK Holdings and Highland, are collectively referred to herein as "Takata" or the "Takata Defendants".
14. At all material times to the cause of action herein, the Defendant, Honda Motor, manufactures and sells motorcycles and automobiles through independent retail dealers, outlets and authorized dealerships primarily in Japan, North America, Europe and Asia.
15. At all material times to the cause of action herein, the Defendant, American Honda, is a subsidiary of the Defendant, Honda Motor, and which manufactures and assembles Honda vehicles in the United States in automobile plants located in the States of Indiana, Ohio and Alabama for distribution and sale in the United States and/or Canada. Further, the Defendant, American Honda, conducts the sale, marketing and operational activities for Honda vehicles and automobile parts in the United States.
16. At all material times to the cause of action herein, the Defendant, Honda Canada, is a subsidiary of the Defendant, Honda Motor, and which manufactures and assembles Honda vehicles in Canada at an automobile plant located in the Province of Ontario for distribution and sale in Canada and/or the United States. Further, the Defendant, Honda Canada, conducts the sale, marketing and operational activities for Honda vehicles and automobile parts in Canada.
17. The Defendants, Honda Motor and American Honda, are collectively referred to as "Honda".

18. At all material times to the cause of action herein, Honda vehicles manufactured, assembled, marketed, distributed and/or sold in Canada by the Defendants, Honda and/or Honda Canada, contained airbags manufactured by the Takata Defendants.

The Class and the Class Period

19. This action is brought on behalf of members of a class (the "BC Honda Class Members") consisting of the Plaintiff and all British Columbia resident persons who purchased or entered into a lease for one or more of the following Honda vehicles in British Columbia during the period commencing January 1, 2000 through to the present, which were manufactured, assembled, marketed, distributed and/or sold by the Defendants, Honda and/or Honda Canada, containing airbags manufactured by the Takata Defendants, which have been the subject of an airbag related warning or recall in Canada by the Defendants, Honda and/or Honda Canada, dated November 18, 2008, February 11, 2010, December 5, 2011, April 10, 2013 and June 20, 2014, or such other class definition or class period as the Court may ultimately decide on the motion for certification:

Make	Model	Model Year(s)
ACURA	1.7 EL	2001, 2002
ACURA	TL	2002, 2003
ACURA	EL	2001, 2002, 2003
ACURA	MDX	2003
HONDA	ACCORD	2001, 2002, 2003
HONDA	CIVIC	2001, 2002, 2003
HONDA	CR-V	2002, 2003
HONDA	ELEMENT	2003
HONDA	ODYSSEY	2002, 2003
HONDA	PILOT	2003

("Defective Vehicles")

20. The term "Defective Vehicles" also includes all vehicles manufactured by the Defendants, Honda and/or Honda Canada, purchased or leased in British Columbia by resident persons of British Columbia that have airbags manufactured by the Takata Defendants, and are recalled at any point after the filing of this Notice of Civil Claim for a reason relating to airbag defects.

Nature of Claim

21. The Defective Vehicles contain defective airbags manufactured by the Defendant, Takata, which pose a risk of serious and/or fatal injury to vehicle occupants. There have been numerous reported cases in the United States where defective airbags manufactured by the Defendant, Takata, in certain Honda vehicles, similar to the Defective Vehicles, which have violently exploded during an accident collision sending metal and plastic shrapnel into the vehicle cabin causing serious and/or fatal injury to vehicle occupants.
22. The airbags at issue in the within action were developed by the Defendant, Takata, in the late 1990's in an effort to make airbags more compact and to reduce toxic fumes that earlier airbag models emitted when deployed. The redesigned airbags are inflated by means of an explosive based on a common compound used in fertilizers. The explosive is encased in a metal cannister. According to recall notices of the Defendant, Honda and Honda Canada, the vehicles' airbags "could produce excessive internal pressure", causing "the inflator to rupture", spraying metal fragments through the airbag cushion and injuring vehicle occupants.
23. In or about August 2014 the Plaintiff received a recall notice from the Defendant, Honda Canada, notifying her that the passenger side airbag of certain 2002- 2003 Honda Civic and CR-V model vehicles and certain 2003 Honda Accord, Element, Odyssey and Pilot model vehicles, including her's, needed replacement pursuant to safety recall campaign M07. The Defendant, Honda Canada, described the said airbag defect in the recall notice as follows:

"A manufacturing error can result in over pressurization of the passenger's airbag inflator during airbag deployment. If an affected airbag deploys the increased internal pressure may cause the inflator to rupture. Metal

fragments from a ruptured inflator could pass through the airbag cushion material, which could cause serious and potentially fatal injury to vehicle occupants."

24. The Defendant, Honda Canada, further advised the Plaintiff in the said recall notice that updated replacement parts for the airbag were not currently available until some later date and to reduce the risk of injury due to the airbag defect no vehicle occupant should use the front passenger seat until the vehicle was repaired. The Defendant, Honda Canada, did not offer the Plaintiff a rental or loaner vehicle while she awaits the arrival of replacement airbag parts and repair.
25. The Defendants, Takata, Honda and/or Honda Canada, have known of the airbag defect in Honda vehicles since at least 2004, delayed reporting the extent of the danger to drivers, passengers and American and Canadian safety regulators, provided contradictory and inconsistent explanations to safety regulators for the airbag defect, repeatedly failed to fully investigate the problem and failed to issue proper and appropriate recalls.
26. To date, the National Highway Transport Safety Administration ("NHTSA") in the United States has recalled approximately 5 million Honda vehicles containing defective airbags manufactured by the Defendant, Takata. In Canada, the Defective Vehicles which have been the subject of five recall notices since 2008 number over 300,000. Worldwide over 14 million vehicles with Defendant, Takata, airbags have been recalled. A large majority of those recalls have come only within the last year despite the fact that many of the vehicles were manufactured with a potentially defective and dangerous airbag over a decade ago.
27. As a result of the misconduct of the Defendants, Takata, Honda and/or Honda Canada, the Plaintiff and BC Honda Class Members were harmed and suffered actual damages in that the Defective Vehicles have potentially deadly airbags that pose an ongoing threat to drivers and passengers and have diminished the resale value of the vehicles in which they are installed.

Factual Allegations

The Defendant, Takata, is a Major Manufacturer of Airbags and Inflators

28. Airbags are meant to inflate rapidly during an automobile collision. The airbag's purpose is to cushion vehicle occupants during a crash and provide protection to their bodies when they strike objects in the vehicle, such as the steering wheel, dash board, windshield or pillars. Because collisions can be at high speed and the deceleration from impact is immediate, to be effective, airbags must deploy simultaneously with the time of the vehicle collision. To accomplish this, wires are connected to the airbag system with highly conductive metals and the airbag systems use small explosive charges to immediately inflate the airbags upon being triggered.
29. The Defendant, Takata, is the world's second largest manufacturer of automotive safety devices, including airbags. It was a pioneer in developing driver side airbags, being the first to market driver side airbags in the early 1980s. It has supplied airbags to North American consumers since at least 1983.
30. The Defendant, Takata, also develops other safety technologies, including, *inter alia*, cushions and inflators, which are component parts of its manufactured airbags.
31. The airbags at issue in the within action were developed by the Defendant, Takata, in the late 1990s in an effort to make airbags more compact and to reduce toxic fumes that earlier airbag models emitted when deployed. The redesigned airbags are inflated by means of an explosive based on a common compound used in fertilizer. That explosive is encased in a metal cannister.
32. The two plants that the Defendant, Takata, manufactured the airbags at issue in the within action are located in Moses Lake, Washington, United States and Monclova, Mexico. These plants also manufacture airbag inflators.
33. Airbags manufactured by the Defendant, Takata, including the airbags at issue in the within action, have been installed in vehicles manufactured by at least ten different automakers,

including the Defendant, Honda and/or Honda Canada.

The Defendant, Honda, Field Reports and Defendant, Takata, Internal Testing Reveal a Problem

34. The Defendant, Takata, became aware that its airbags, and in particular the inflator component, were defective at least as early as 2001 when a recall notice was issued relating to exploding Takata airbags in Isuzu manufactured vehicles.
35. In 2004 an airbag manufactured by the Defendant, Takata, violently exploded in a Honda Accord in the State of Alabama, United States shooting out metal fragments and injuring the driver. The Defendants, Honda and Takata, deemed it "an anomaly" and did not issue a recall or seek the involvement of federal safety regulators in the United States.
36. In or about June and August 2007 the Defendant, Honda, notified the Defendant, Takata, of three additional airbag explosion incidents that occurred in the United States. All three incidents involved defective airbags shooting metal fragments into the faces and limbs of vehicle occupants upon deployment of the airbags. These incidents triggered an internal investigation by the Defendant, Takata, including a survey of inflators.
37. The Defendant, Honda, filed a standard report with federal safety regulators in the United States on the initial airbag injury in 2004, and followed up with similar findings on the incidents in 2007. The Defendant, Honda, did not issue any recalls or inform safety regulators that the Takata airbags posed a substantial risk of serious and/or fatal injury when deployed.

2008: U.S. Recall 08V593

38. In or about November 2008 the Defendant, Takata, shared the results of the inflator survey analysis with the Defendant, Honda. That analysis indicated an airbag inflator issue. The results triggered a recall by the Defendant, Honda, of about 4,200 of its vehicles in the United States. This recall occurred over four years after the first reported Takata airbag explosion incident in a Honda car.

39. The 2008 U.S. Recall involved certain 2001 Honda Accord and Civic model vehicles to replace Takata airbags that "could produce excessive internal pressure," causing "the inflator to rupture", spraying metal fragments through the airbag cushion.

2008: Transport Canada Recall #2008414

40. In or about November 2008 the Defendants, Honda and/or Honda Canada, issued a similar recall in Canada involving certain 2001 and 2002 Honda Accord, Civic, Aura TL and 1.7EL model vehicles to replace driver side airbags "that could produce excessive internal pressure", causing "the inflator to rupture", spraying metal fragments through the airbag cushion, and injuring vehicle occupants. The total number of Honda vehicles affected by the 2008 Canadian Recall was 91,447.

2009: U.S. Recall 09V259

41. In or about June 2009 the Defendant, Takata, provided a follow up report to the Defendant, Honda, on its November 2008 analysis indicating that issues related to propellant production, which appeared to have caused the improper inflator performance.
42. Subsequently, the Defendant, Honda, received two further claims of "unusual deployment" of the Takata airbags in certain model Honda vehicles causing serious and/or fatal injury to vehicle occupants.
43. As a result of the Defendant, Takata's, June 2009 follow up report and the additional claims of "unusual deployment", on or about June 30, 2009 the Defendant, Honda, expanded the recall to 440,000 vehicles, which included 2001 and 2002 Accord, Civic and Acura model vehicles.
44. In or about August 2009 the NHTSA Recall Management Division sent the Defendant, Honda, an information request to explain why it did not include 2009 U.S. recall vehicles in the 2008 U.S. Recall, and to evaluate the timeliness of its recent defect decision.
45. Further, the NHTSA Recall Management Division wanted to know the difference between

the driver's airbag inflators in the 2008 U.S. Recall vehicles from the inflators in the 2009 U.S. Recall vehicles and to explain how this distinction, or any other between the two sets of vehicles, convinced the Defendant, Honda, at the time that it did not need to include the latter set in the 2008 U.S. Recall population.

46. The NHTSA Management Recall Division also requested that the Defendant, Honda, provide complaints, lawsuits, warranty claims and field reports along with an explanation of the "unusual deployments" and its investigative efforts.
47. In or about September 2009 the Defendant, Honda, in reply advised the NHTSA that its information about the "unusual deployments" came from the Defendant, Takata. The Defendant, Honda, also reported, based on information from the Defendant, Takata, that the problem with the airbags was isolated to the production of the airbag propellant prior to assembly of the inflators. In particular, the Defendant, Honda, advised that the cause was related to the process of pressing the propellant into wafers that were later installed into the inflator modules and limited to one production process involving one high-precision compression press that was used to form the propellant into wafers. The Defendant, Honda, also disclosed that it had fielded nine complaints and one lawsuit related to the 2008 and 2009 U.S. Recalls. The Defendant, Honda, also, for the first time, advised the NHTSA about the 2004 incident involving an "unusual deployment" of the vehicles' airbag.
48. A number of complaints have been submitted to the NHTSA by Honda vehicle operators reporting defective Takata airbag deployments that have released metal shards into the cabin of the vehicle.

The Defendant, Takata's, Contact with the NHTSA

49. On or about November 29, 2009 the NHTSA requested information from the Defendant, Takata, as part of their ongoing investigation into the airbag inflators that triggered the 2009 U.S. Recall.
50. On or about December 23, 2009 the Defendant, Takata, submitted a partial response to the NHTSA ("Partial Response") and then a full response on or about February 19, 2010 ("Full

Response”).

51. In both responses, the Defendant, Takata, indicated that there were no substantive design differences between the inflators in the airbags at issue in the two U.S. Recalls. However, in its Full Response, the Defendant, Takata, indicated that there were, in fact, differences in the production processes between the lots.
52. In both responses, the Defendant, Takata, asserted that the defects only existed in specific lots manufactured between certain dates. It claimed that the inflators involved in the 2008 U.S. Recall were manufactured between October 29 and December 1, 2000 and those involved in the 2009 U.S. Recall were manufactured between August 23, 2000 and February 25, 2001.
53. Further, in both responses, the Defendant Takata, stated that it did not provide any airbag inflators that were the same or substantially similar to the inflators in vehicles covered by the 2008 and 2009 U.S. Recalls to any customers other than the Defendant, Honda. This statement would prove to be untrue.
54. In its Full Response, the Defendant, Takata, asserted that the defect identified in the 2009 U.S. Recall was the result of a single compression press. However, it recommended to the Defendant, Honda, that a small number of other vehicles with propellant processed on a different press be recalled as well.
55. In its Full Response, the Defendant, Takata, asserted that the defective parts were all manufactured on a particular press (the “Stokes Press”) in a single manufacturing plant. It further asserted that while it did manufacture 2,400 inflators using the same process as the defective inflators, the design was different, and as such, was convinced that the inflators sold contained no safety related defect.
56. The Defendant, Takata, further asserted in its Full Response that it was of the belief that expanding the recall to include all vehicles equipped with inflators and propellant manufactured on the Stokes Press, produced through and including February 28, 2001, would capture all inflators with tablets that had a risk of producing overly energetic

combustion. This recommendation, as well as the analysis that supported it, was presented to the Defendant, Honda, on June 12, 2009.

57. Both the Defendant, Honda and Takata, represented to the public and the NHTSA that the total number of affected vehicles was quite small.

2010: U.S. Recall 10V041

58. In 2010 the Defendant, Honda, announced a third recall for an additional 379,000 vehicles, including 2002 Honda CR-V, 2002 Honda Odyssey, 2003 Honda Pilot, 2002-2003 Acura 3.2TL and 2003 Acura 3.2L model vehicles, while adding more 2001 and 2002 Accords and Civics to its 2009 U.S. Recall list.
59. The Defendant, Honda's, explanation for the airbag defects changed yet again. It explained that there were two different manufacturing processes utilized in the preparation of an airbag propellant. While one process is within specification, the other is not. The Defendant, Honda's, expanded recall reached those vehicles employing airbags that had utilized manufacturing processes not within specification.

2010: Transport Canada Recall #2010042

60. On or about February 11, 2010 the Defendant, Honda and/or Honda Canada, issued a recall notice in Canada for 2001-2002 Acura 1.7EL, 2002-2003 Acura TL, 2001-2002 Honda Accord, 2001-2002 Honda Civic, 2002 Honda CR-V and 2002 Honda Odyssey model vehicles relating to the said airbag defect on the driver's side. According to Transport Canada's Road Safety Recall Database the number of Honda vehicles that were affected in Canada from this second recall was 41,685.

2011: U.S. Recall 11V260

61. In or about April 2011, the Defendant, Honda, filed a NHTSA Part 573 Defect and Noncompliance Report for 2,430 replacement service part airbag modules that might have been installed in vehicles covered by previous recall expansions.

2011: Transport Canada Recall #2011419

62. On or about December 5, 2011 the Defendants, Honda and/or Honda Canada, announced a third recall in Canada for 2001-2002 Acura EL, 2002-2003 Acura TL, 2001-2002 Honda Accord, 2001-2002 Honda Civic, 2002 Honda CR-V and 2002-2003 Honda Odyssey model vehicles relating to the said airbag defect on the driver's side. According to Transport Canada's Road Safety Recall Database the number of Honda vehicles that were affected in Canada from this third recall was 26,964.

2013: U.S. Recall 13V132

63. By 2013 the defective airbag issue was far more widespread than the Defendants, Takata and/or Honda, initially reported to the NHTSA.
64. According to the Defendant, Honda's, Part 573 Defect and Noncompliance Report an exploding airbag in Puerto Rico in October 2011 prompted it to ask permission from the NHTSA to collect healthy airbag modules to see if abnormal combustion was possible. The Defendant, Honda, found that even its so-called healthy airbags could abnormally combust in certain conditions.
65. On February 8, 2013 the NHTSA and the Defendant, Honda, met to discuss the ongoing investigation into the defective Takata airbags in its vehicles. The Defendant, Honda, stated the following:

" A recreation of propellant production using the same methods as were used during 2001-2002 production periods indicated that it was possible for propellant produced during 2001-2002 to be manufactured out of specification without the manufacturing processes correctly identifying and removing the out of specification propellant. Separately, Honda was informed by the supplier of another potential concern related to airbag inflator production that could affect the performance of these airbag modules."

66. On April 10, 2013 the Defendant, Honda, filed a Recall Notification for their 2001-2003 Civic, 2002-2003 CR-V and 2002 Odyssey model vehicles with the NHTSA. The Defendant, Honda, asserted that 561,422 vehicles could be affected by the following part defect:

“Defect description:

In certain vehicles, the passenger’s (frontal) airbag deflator could produce excessive internal pressure. If an affected airbag deploys, the increased internal pressure may cause the inflator to rupture. In the event of an inflator rupture, metal fragments could be propelled upward toward the windshield, or downward toward the front passenger’s foot well, potentially causing injury to vehicle occupant.”

67. On April 11, 2013 the Defendant, Takata, filed a Defect Information Report titled “Certain Airbag Inflators Used as Original Equipment” (“DIR”). In that report the Defendant, Takata, identified the defective airbags as follows:

“Certain airbag inflators in frontal passenger-side airbag modules equipped with propellant wafers manufactured at Takata’s Moses Lake, Washington plant during the period from April 13, 2000 (start of production) through September 11, 2002 ... and certain airbag inflators manufactured at Takata’s Monclova, Mexico plant during the period from October 4, 2001 (start of production) through October 31, 2002...”

68. It was not until its April 2013 DIR that the Defendant, Takata, finally admitted that its affected airbag inflators were installed as original equipment in vehicles manufactured by car manufacturers other than the Defendant, Honda, including Toyota, Nissan, Mazda and BMW.
69. The Defendant, Takata, asserted that it did not know how many inflators were installed in vehicles, as it did not possess those records. While it did not have the information to estimate the number of vehicles affected, the Defendant, Takata, still insisted that the total

number of installed airbag inflators was extremely low.

70. The Defendant, Takata, described the defect as follows:

"Some propellant wafers produced at Takata's plant in Moses Lake, Washington, between April 13, 2000 and September 11, 2002 may have been produced with an inadequate compaction force... In addition some propellant wafers used in inflators produced at Takata's plant in Monclova, Mexico between October 4, 2001 and October 31, 2002, may have been exposed to uncontrolled moisture conditions. These wafers could have absorbed moisture beyond the allowable limits...In both cases propellant could potentially deteriorate over time due to environmental factors, which could lead to over-aggressive combustion in the event of an airbag deployment. This could create excessive internal pressure with the inflator and the body of the inflator could rupture."

2013: Transport Canada Recall #2013111

71. On or about April 10, 2013 the Defendants, Honda and/or Honda Canada, announced a fourth recall in Canada for 2001-2003 Acura EL, 2002-2003, 2001-2003 Honda Civic, 2002-2003 Honda CR-V and 2002 Honda Odyssey model vehicles relating to the said airbag defect on the frontal passenger side. According to Transport Canada's Road Safety Recall Database the number of Honda vehicles that were affected in Canada from this fourth recall was 107,786. The recall details are described as follows:

"On certain vehicles, the passenger (frontal) airbag inflator could produce excessive internal pressure during airbag deployment. Increased pressure may cause the inflator to rupture, which could allow fragments to be propelled toward vehicle occupants, increasing the risk of injury. This could also damage the airbag module, which could prevent deployment. Failure of the passenger airbag to fully deploy during a crash (where deployment is warranted) could increase the risk of personal injury to the seat occupant."

2014: U.S. Recall 14V-349

72. On June 19, 2013 the Defendant, Honda, advised the NHTSA that it had determined a potential defect relating to the passenger airbag of 2002-2003 Honda Civic, CR-V and Odyssey model vehicles, 2003 Honda Accord, Element and Pilot model vehicles and 2003 Acura MDX model vehicles, it was expanding the 2013 US Recall and provided notification in accordance with Part 573 Defect and Noncompliance Reports.

73 The Defendant, Honda, described the defect as follows:

“In certain vehicles, the passenger’s (frontal) airbag deflator could produce excessive internal pressure. If an affected airbag deploys, the increased internal pressure may cause the inflator to rupture. In the event of an inflator rupture, metal fragments could be propelled upward toward the windshield, or downward toward the front passenger’s foot well, potentially causing injury to a vehicle occupant.”

74. On July 11, 2014 the Defendant, Honda, advised the NHTSA that the number of potentially affected vehicles was 988,440.

2014: Transport Canada Recall #2014242

75. On or about June 20, 2014 the Defendants, Honda and/or Honda Canada, announced a fifth recall in Canada for 2002-2003 Acura EL, 2003 Acura MDX, 2003 Honda Accord, 2002-2003 Honda Civic, 2002-2003 Honda CR-V, 2003 Honda Element, 2002-2003 Honda Odyssey and 2003 Honda Pilot model vehicles relating to the said airbag defect on the frontal passenger side. According to Transport Canada’s Road Safety Recall Database the number of Honda vehicles that were affected in Canada from this fifth recall was 107,786. The recall was an expansion of the earlier 2013 Canadian Recall. The recall details are described as follows:

“On certain vehicles, the passenger (frontal) airbag inflator could produce

excessive internal pressure during airbag deployment. Increased pressure may cause the inflator to rupture, which could allow fragments to be propelled toward vehicle occupants, increasing the risk of injury. This could also damage the airbag module, which could prevent deployment. Failure of the passenger airbag to fully deploy during a crash (where deployment is warranted) could increase the risk of personal injury to the seat occupant.”

Recalls and Notices Relating to Defective Airbag inflators in Non-Honda Vehicles

76. In April 2013 based on the Defendant, Takata's, new admissions, six major automakers, including Nissan, Mazda, BMW, Pontiac and the Defendant, Honda, issued recalls of approximately 3.6 million vehicles containing Takata airbags.
77. Chrysler and Ford similarly announced limited regional NHTSA recalls for vehicles equipped with the Takata airbag inflators in the United States.
78. On October 22, 2014 the NHTSA expanded the list of vehicles affected by the recall of the Defendant, Takata's, defective airbags to cover ten automakers and numerous car models, totaling nearly 8 million vehicles.
79. Over the past 13 years that the Defendant, Takata, has known there was a problem with the safety of their airbags as there has been at least four reported deaths and 139 injuries linked to the defective airbags.

Defendant, Takata, Fails to Meet Safety Standards and Maintain Airbag Quality

80. As recently as 2011, supervisors at the Defendant, Takata's, Monclova, Mexico plant were reporting potentially lethal defects in the manufacturing process as to the said airbags. Based on the internal documents of the Defendant, Takata, it was unable to meet its own safety standards up until at least 2011. The same internal documents show that in 2002 the Defendant, Takata's, plant in Monclova, Mexico allowed a defect rate that was six to eight times above the acceptable limits or roughly 60 to 80 defective parts for every 1 million airbag inflators shipped.

U.S. Government Investigations

81. The NHTSA is now investigating the Defendant, Takata's, airbags manufactured between 2000 and 2007 to determine whether the airbag inflators made during that time period were improperly sealed.
82. In a Consumer Advisory dated October 22, 2014 , the NHTSA stated the following:

"The National Highway Traffic Safety Administration urges owners of certain Toyota, Honda, Mazda, BMW, Nisan, Mitsubishi, Subaru, Chrysler, Ford, and General Motors vehicles to act immediately on recall notices to replace defective Takata airbags..."
83. The United States Department of Justice has reported that it is investigating whether the Defendant, Takata, misled American safety regulators about the number of defective airbags it sold to automakers.
84. the United States Congress has expressed its concern over the issue. Senators Richard Blumenthal and Edward Markey advised the United States Department of Transportation that the NHTSA should immediately issue a nation-wide recall on all the affected vehicles.

The Defendant, Honda and/or Honda Canada, have Failed to Provide Vehicle Owners with Defendant, Takata, Airbags with Replacement Parts or Vehicles

85. In its August 2014 recall notice to the Plaintiff, the Defendant, Honda Canada, advised her that updated parts for the airbag repair were not then available but would advise her at a later date as to their availability and in the interim to reduce the risk of injury due to the airbag defect no vehicle occupant should use the front passenger seat until the vehicle is repaired.
86. At this time the Defendant, Honda and/or Honda Canada, have not offered affected vehicle owners loaner cars to use until their airbags can be repaired or replaced.

87. The Plaintiff and BC Honda Class Members are now left in the position of either being without a vehicle or driving a vehicle that does not have an operable airbag for an unknown number of months.
88. In the United States authorized dealers are experiencing a severe shortage of parts to replace the defective airbags. Honda owners who have received recall notices have been advised to wait at least a month before their authorized dealer has availability to assess their vehicle.

Part 2: RELIEF SOUGHT

The Plaintiff, on its own behalf, and on behalf of the BC Honda Class Members, claims against the Defendants as follows:

- (a) an order certifying this action as a class proceeding against Takata Corporation, TK Holdings, Inc., Highland Industries, Inc., Honda Motor Company, Ltd., American Honda Motor Company, Inc. and Honda Canada Inc. and appointing the Plaintiff as the named representative of the BC Honda Class Members;
- (b) a declaration that the Takata airbags in the Defective Vehicles are defective;
- (c) an order enjoining the Defendants to desist from further deceptive distribution, sales, and lease practices with respect to the Defective Vehicles;
- (d) an order directing the Defendants to permanently, expeditiously and completely repair the Defective Vehicles to eliminate the defective airbags;
- (e) a declaration that the Defendants provide an accounting and disgorge, for the benefit of the Plaintiff and the BC Honda Class Members, all or part of the profits it received for the sale or lease of the Defective Vehicles, or to make full restitution to the Plaintiff and BC Honda Class Members;
- (f) general damages;

- (g) special damages;
- (h) punitive damages, aggravated and/or exemplary damages;
- (i) special costs; and
- (j) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (k) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Jurisdiction

1. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the BC Honda Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the "CJPTA") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (e)(i),(iii)(a)(b), (f), (g), (h) and (i) of the *CJPTA* because this proceeding:

(e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;

(e) (iii)(a)(b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

(g) concerns a tort committed in British Columbia;

(h) concerns a business carried on in British Columbia; and

(i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Causes of Action

Violation of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 (*the "BPCPA"*)

1. The Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
2. The Defective Vehicles are consumer "goods" within the meaning of the *BPCPA*.
3. The Plaintiff and the BC Honda Class Members are a "consumer" within the meaning of the *BPCPA*.
4. The Defendants are a "supplier" within the meaning of the *BPCPA*.
5. The purchase or lease of the Defective Vehicles by the Plaintiff and the BC Honda Class Members constitutes a "consumer transaction" within the meaning of the *BPCPA*.
6. By failing to disclose and actively concealing the dangerous propensities of the Defective Vehicles and/or the Takata airbags therein, the Defendants engaged in unfair and deceptive trade practices prohibited by the *BPCPA*.
7. In the course of their business, the Defendants wilfully failed to disclose and actively concealed the dangers and risks posed by the Takata airbags in the Defective Vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. The Defendants also engaged in unlawful trade practices by employing deception,

deceptive acts or practices, fraud, misrepresentations, concealment, suppression or omission of a material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale or lease of the Defective Vehicles.

8. As alleged above, the Defendants knew of the dangers and risk posed by the Takata airbags. The BC Honda Class Members were deceived by the Defendants omissions into believing that the Defective Vehicles were safe.
9. The Defendants knew, or should have known, that their conduct violated the *BPCPA*.
10. As alleged above, the Defendants made material statements about the safety and reliability of the Defective Vehicles that were either false or misleading.
11. The Defendants engaged in a deceptive trade practice when they failed to disclose material information concerning the Defective Vehicles and/or the Takata airbags which they knew at the time of sale or lease. The Defendants knew of and deliberately withheld information about the propensity of the Takata airbags to release shrapnel upon deployment or otherwise malfunction in order to ensure that consumers would purchase their vehicles and to induce the consumer to enter into a transaction.
12. To protect their profits, avoid remediation costs and a public relations nightmare, the Defendants concealed the dangers and risks posed by the Takata airbags and their tragic consequences. The Defendants allowed unsuspecting new and used car purchasers to continue to buy or lease the Defective Vehicles and allowed all Defective Vehicle owners or lessees to continue to drive highly dangerous vehicles.
13. The Defendants each owed the BC Honda Class Members a duty to disclose the defective nature of the Defective Vehicles and/or dangers and risks posed by the Takata airbags, including the dangerous risk that the Takata airbags will release shrapnel upon deployment, because they:
 - (a) possessed exclusive knowledge of the defects rendering the Defective Vehicles and/or the Takata airbags inherently more dangerous and

unreliable than similar vehicles;

- (b) intentionally concealed the hazardous situation with the Defective Vehicles and/or Takata airbags through their deceptive marketing campaign and recall program which was designed so as to conceal the problems from the BC Honda Class Members; and/or
 - (c) made incomplete representations about the safety and reliability of the Defective Vehicles and/or Takata airbags while purposefully withholding material facts from the BC Honda Class Members that contradicted those representations.
- 14. The Defective Vehicles and/or Takata airbags posed an unreasonable risk of serious and/or fatal injury to the BC Honda Class Members, passengers, other motorists, pedestrians and the public at large, as the Takata airbags are susceptible to releasing shrapnel upon deployment or other malfunction.
- 15. The Defendants unfair or deceptive acts or practices were likely to, and did in fact, deceive reasonable consumers, including the BC Honda Class Members, about the true safety and reliability of the Defective Vehicles and/or Takata airbags.
- 16. The propensity of the Takata airbags installed in the Defective Vehicles to emit shrapnel upon deployment or otherwise malfunction was material to the BC Honda Class Members. Had the BC Honda Class Members known that their vehicles had serious safety dangers, risks and/or defects, they either would not have purchased their Defective Vehicles containing Takata airbags, or would have paid less for them than they did.
- 17. The BC Honda Class Members suffered ascertainable loss caused by the Defendants failure to disclose material information. The BC Honda Class Members overpaid for their vehicles and did not receive the benefit of their bargain, that is vehicles containing airbags that did not pose safety risks. As a result of the existence of, the concealment of and the failure to remedy the dangers and risks posed by the Takata airbags and Defective Vehicles, and the piecemeal and serial recalls, the value of their Defective Vehicles was and

is diminished. This is particularly true now that the safety issues with the Takata airbags in the Defective Vehicles have come to light, and the BC Honda Class Members own and lease unsafe vehicles.

18. The BC Honda Class Members have been proximately and directly damaged by the Defendants misrepresentations, concealment and non-disclosure of the dangers and risks posed by the Takata airbags in the Defective Vehicles. The diminishment of the Defective Vehicles value was exacerbated by the Defendants failure to timely disclose and remedy the dangers and risks posed by the Takata airbags. The Defendants widely published conduct and the never ending and piece meal nature of the Defendant, Honda and/or Honda Canada's, recalls have tarnished the Defective Vehicles that no reasonable consumer would purchase them - let alone pay what would otherwise be fair market value for the vehicles.
19. The BC Honda Class Members are at risk of irreparable injury as a result of the Defendants acts and omissions in violation of the *BPCPA*. These violations present a continuing risk to the BC Honda Class Members as well as to the general public. The Defendants unlawful acts and practices as alleged herein affect the public interest.
20. The recalls and repairs to be performed by the Defendants have not been adequate. The recall is not an effective remedy.
21. As a direct and proximate result of the Defendants violations of the *BPCPA*, the BC Honda Class Members have suffered injury-in-fact and/or actual damage.

Breach of the Implied Warranty or Condition of Merchantability pursuant to the *Sale of Goods Act*, R.S.B.C 1996, c.410 ("SGA")

22. The Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
23. The Defendants are a "seller" with respect to motor vehicles within the meaning of the SGA.

24. Pursuant to the SGA, a warranty that the Defective Vehicles, and Takata airbags therein, were in merchantable condition, or reasonably fit for their intended purpose, was implied by law in the transactions when the BC Honda Class Members purchased or leased their Defective Vehicles containing Takata airbags.
25. These vehicles, when sold and at all times thereafter, were not merchantable and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that the Takata airbags therein are at risk of expelling shrapnel upon deployment or otherwise malfunctioning.
26. The Defendants had notice of these issues by their knowledge of the issues, prior complaints filed against them and/or others, and internal documents. Notice of these issues is being given to the BC Honda Class Members through this Notice of Civil Claim before or within a reasonable amount of time after the Defendants, Honda and/or Honda Canada, issued recalls and warnings and the allegations of vehicle defects became public.

Fraud By Concealment

27. The Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
28. As described above, the Defendants made material omissions and affirmative misrepresentations regarding the Defective Vehicles and/or Takata airbags.
29. The Defendants knew the representations were false when made.
30. The vehicles purchased or leased by the BC Honda Class Members were, in fact, defective, unsafe and unreliable, as the vehicles' Takata airbags were subject to releasing shrapnel upon deployment or other malfunctions.
31. The Defendants had a duty to disclose that these vehicles, and the Takata airbags therein, were defective, unsafe and unreliable in that the Takata airbags vehicles were subject to releasing shrapnel upon deployment or other malfunctions given that the BC Honda Class

Members relied on the Defendants representations that the vehicles they were purchasing and retaining were safe.

32. The aforementioned concealment was material, because if it had been disclosed, the BC Class Honda Class Members would not have bought, leased or retained their vehicles, or would have paid less for the vehicles.
33. The aforementioned representations were also material as they were facts that would typically be relied upon by a person purchasing, leasing or retaining a new or used motor vehicle. The Defendants knew or recklessly disregarded that their representations were false as they knew that people had suffered serious and/or fatal injury as a result of the vehicles' Takata airbags. The Defendants intentionally made the false statements in order to sell vehicles, avoid the expense and public relations nightmare of a recall.
34. The BC Honda Class Members relied on the Defendants reputations, along with their failure to disclose the Takata airbag's dangerous problems and affirmative assurances that its vehicles and/or airbags were safe and reliable, in purchasing, leasing or retaining the Defective Vehicles.
35. As a result of their reliance, the BC Honda Class Members have been injured in an amount to be proven at trial, including, but not limited to, their lost benefit of the bargain and overpayment at the time of purchase and/or diminished value of their vehicles.
36. Further, and in the alternative, the Plaintiff and the BC Honda Class Members are entitled to claim for the wrongful or unlawful acts of the Defendants based on equitable and restitutionary principles.

Plaintiff's(s') address for service:

Garcha & Company
Barristers & Solicitors
#405 - 4603 Kingsway
Burnaby, BC V5H 4M4

Fax number address for service (if any):

604-435-4944

E-mail address for service (if any):

none

Place of trial:

Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

Dated: November 11, 2014



Signature of K.S. Garcha
lawyer for plaintiff(s)

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE
BRITISH COLUMBIA**

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the BC Honda Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the "CJPTA") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10(e)(i), (iii)(a) & (b), (f), (g), (h) and (i) of the *CJPTA* because this proceeding:

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(i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A class action involving the purchase and/or lease of motor vehicles containing defective airbag(s).

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c.50
 2. *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28
 3. *Business Practices and Consumer Protection Act*, S.B.C. 2004 ;
 - 4.. *Sale of Goods Act*, R.S.B.C 1996, c.410
 5. *Motor Vehicle Safety Act* SC 1993, c.16
 6. *Court Order Interest Act*, R.S.B.C., c. 79
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