

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MDL No. 2599
Master File No. 15-MD-02599-FAM

**IN RE: TAKATA AIRBAG PRODUCTS
LIABILITY LITIGATION,**

THIS DOCUMENT RELATES TO
ECONOMIC LOSS TRACK CASES

BUTLER AUTO RECYCLING, INC., *et al.*,
individually and on behalf of all others
similarly situated

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC, *et al.*,

Defendants.

**FINAL ORDER APPROVING CLASS
SETTLEMENT AND CERTIFYING SETTLEMENT CLASS**

WHEREAS, the Court, having considered the Settlement Agreement (the “Settlement Agreement”) between and among the Recycler Plaintiffs and Defendants BMW of North America, LLC and BMW Manufacturing Co., LLC (collectively “BMW”), the Court’s Order Granting Preliminary Approval of the Class Settlement, Directing Notice to the Class, and Scheduling Fairness Hearing, having held a Fairness Hearing on November 3, 2023, and having considered all of the submissions and arguments with respect to the Settlement Agreement, and otherwise being fully informed, and good cause appearing therefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. This Final Order Approving Class Action Settlement incorporates herein and makes a part hereof, the Settlement Agreement and its exhibits, and the Preliminary Approval Order.

2. The Court has personal jurisdiction over all Parties in the Action, including, but not limited to, all Class Members, and has subject matter jurisdiction over the Action, including, without limitation, jurisdiction to approve the Settlement Agreement, grant final certification of the Class, to settle and release all claims released in the Settlement Agreement, and to dismiss the economic loss claims asserted against BMW in the Actions with prejudice and enter final judgment with respect to BMW in the Actions. Further, venue is proper in this Court.

I. THE SETTLEMENT CLASS

3. Based on the record before the Court, including all submissions in support of the settlement set forth in the Settlement Agreement, objections and responses thereto and all prior proceedings in the Action, as well as the Settlement Agreement itself and its related documents and exhibits, the Court hereby confirms the certification of the following nationwide Class for settlement purposes only:

All Automotive Recyclers in the United States, the District of Columbia, and the territories and possessions of the United States prior to the date of the Preliminary Approval Order. Excluded from this Class are: (a) BMW, their officers, directors and employees; their affiliates and affiliates' officers, directors and employees; their distributors and distributors' officers, directors and employees; and BMW's Dealers and their officers and directors; (b) Settlement Class Counsel and their employees; (c) judicial officers and their immediate family members and associated court staff assigned to this case; and (d) persons or entities who or which timely and properly exclude themselves from the Class.

"Automotive Recyclers" means all persons who and entities which purchased a Subject Vehicle containing a Takata Inflator, as defined below, and that currently engage, or at the time of said purchase, were engaged, in the business of automotive salvage or recycling, or that recycled, re-furnished, or removed for sale or re-sale, second-hand Takata Inflators or Takata Inflator-related component parts.

4. The Court finds that only those persons and entities listed on Appendix B to this Final Order Approving Class Action Settlement have timely and properly excluded themselves from the Class and, therefore, are not bound by this Final Order Approving Class Action Settlement or the accompanying Final Judgment.

5. The Court confirms, for settlement purposes and conditioned upon the entry of the Final Order and Final Judgment and upon the occurrence of the Effective Date, that the Class meets all the applicable requirements of FED. R. CIV. P. 23(a) and (b)(3):

a. *Numerosity.* The Class, which is ascertainable, consists of approximately 16,300 members located throughout the United States and satisfies the numerosity requirement of FED. R. CIV. P. 23(a)(1). Joinder of these widely dispersed, numerous Class Members into one suit would be impracticable.

b. *Commonality.* There are some questions of law or fact common to the Class with regard to the alleged activities of BMW in this case. These issues are sufficient to establish commonality under FED. R. CIV. P. 23(a)(2).

c. *Typicality.* The claims of class representatives are typical of the claims of the Class Members they seek to represent for purposes of settlement.

d. *Adequate Representation.* Recycler Plaintiffs' interests do not conflict with those of absent members of the Class, and Recycler Plaintiffs' interests are co-extensive with those of absent Class Members. Additionally, this Court recognizes the experience of Settlement Class Counsel. Recycler Plaintiffs and their counsel have prosecuted this action vigorously on behalf of the Class. The Court finds that the requirement of adequate representation of the Class has been fully met under FED. R. CIV. P. 23(a)(4).

e. *Predominance of Common Issues.* The questions of law or fact common to

the Class Members predominate over any questions affecting any individual Class Member.

f. *Superiority of the Class Action Mechanism.* The class action mechanism provides a superior procedural vehicle for resolution of this matter compared to other available alternatives. Class certification promotes efficiency and uniformity of judgment because the many Class Members will not be forced to separately pursue claims or execute settlements in various courts around the country.

6. The designated class representatives are as follows: Butler Auto Recycling, Inc., Cunningham Brothers Auto Parts, LLC; Midway Auto Parts LLC; Road Tested Parts, Inc. d/b/a weaverparts.com; Snyder's Ltd.; Triple D Corporation d/b/a Knox Auto Parts; Automotive Dismantlers and Recyclers Association, Inc. d/b/a Automotive Recyclers Association; Rigsby's Auto Parts & Sales, Inc.; Quartno's Auto Salvage and Young's Auto Center and Salvage, LP. The Court finds that these Class Members have adequately represented the Class for purposes of entering into and implementing the Settlement Agreement. The Court appoints Podhurst Orseck, P.A. (Court-appointed Chair Lead Counsel); Boies, Schiller & Flexner L.L.P. and Power, Rogers and Smith, P.C., (Court-appointed Co-Lead Counsel for the Economic Loss Track); and Baron & Budd P.C., Carella Byrne Cecchi Olstein P.C., and Lieff Cabraser Heimann & Bernstein, LLP (Court-appointed Plaintiffs' Steering Committee) on behalf of the Plaintiffs in the *Takata* MDL as Settlement Class Counsel.

7. In making all of the foregoing findings, the Court has exercised its discretion in certifying the Class.

II. NOTICE AND OUTREACH TO CLASS MEMBERS

8. The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds

that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. CIV. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

9. The Court further finds that Settling Defendants, through the Settlement Notice Administrator, provided notice of the settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal government officials the requisite ninety (90) day time period to comment or object to the Settlement Agreement before entering its Final Order and Final Judgment.

III. FINAL APPROVAL OF SETTLEMENT AGREEMENT

10. The Court finds that the Settlement Agreement resulted from extensive arm's-length good faith negotiations between Settlement Class Counsel and Settling Defendants, through experienced counsel.

11. Pursuant to FED. R. CIV. P. 23(e), the Court hereby finally approves in all respects the Settlement as set forth in the Settlement Agreement and finds that the Settlement Agreement,

and all other parts of the settlement are, in all respects, fair, adequate, and reasonable and in the best interest of the Class and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Class Action Fairness Act, and any other applicable law. The Court hereby declares that the Settlement Agreement is binding on all Class Members, except those identified on Appendix B, and it is to be preclusive in the Action. The decisions of the Settlement Claims Administrator relating to the review, processing, determination, and payment of Claims submitted pursuant to the Settlement Agreement are final and not appealable.

12. The Court finds that the Settlement Agreement is fair, adequate, and reasonable based on, among other things, the following factors: (a) there is no fraud or collusion underlying the Settlement Agreement; (b) the complexity, expense, uncertainty, and likely duration of litigation in the Action favor settlement on behalf of the Class; (c) the stage of the proceedings and the amount of discovery completed; (d) the probability of the Plaintiffs' success on the merits; (e) the range of possible recovery; and (f) the opinions of the Settlement Class Counsel, Class Representatives, and the substance and amount of opposition to the Settlement. *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1345 (S.D. Fla. 2011).

13. The Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Settlement Agreement. In addition, the Parties are authorized to agree to and adopt such amendments and modifications to the Settlement Agreement as: (i) shall be consistent in all material respects with this Final Order Approving Class Action Settlement; and (ii) do not limit the rights of the Class.

14. The Court has considered all objections, timely and proper or otherwise, to the Settlement Agreement and denies and overrules them as without merit.

IV. ATTORNEYS' COSTS AND SETTLEMENT INCENTIVE AWARDS TO CLASS REPRESENTATIVES

15. Class Counsel has not applied for service awards based upon the recent Eleventh Circuit opinion on *Johnson v. NPAS Sols., LLC*, 43 F.4th 1138 (11th Cir. 2022).

16. Additionally, the Settlement Agreement provides that Class Counsel may seek reimbursement of up to \$\$214,938.00 to be shared equally by the settling automakers (or \$26,867.25 per automaker) in attorneys' costs and expenses. Settlement Class Counsel seeks \$[AMOUNT] in attorneys' costs and expenses. Settlement Class Counsel are not seeking any attorneys' fees associated with the settlement of this action. The court finds that the attorneys' costs and expenses incurred by class counsel over the course of this litigation are reasonable, and therefore the application for a total of \$[AMOUNT] in attorneys' costs and expenses is **Granted**.

V. DISMISSAL OF CLAIMS, RELEASE

17. All economic-loss claims asserted against BMW in the Action are hereby dismissed with prejudice on the merits and without costs to any party, except as otherwise provided herein or in the Settlement Agreement.

18. Upon entry of this Final Order Approving Class Action Settlement and the Final Judgment, class representatives and each Class Member (except those listed on Appendix B), on behalf of themselves and any other legal or natural persons who may claim by, through, or under them, agree to fully, finally, and forever release, relinquish, acquit, discharge, and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, losses, damages, and relief of any kind or type regarding the subject matter of the Actions and/or the subject Inflatons, including, but not limited to, any and all compensatory damages, exemplary damages, punitive damages, statutory damages or penalties, expert or attorneys' fees and expense, and equitable relief or remedies, whether past, present, or future, legal or equitable

in nature, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state, or local law, statute, ordinance, regulation, code, contract, common law, violations of or liability under any federal or state's deceptive, unlawful, or unfair business or trade practices, false, misleading, or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied, or any other warranties, RICO, the Lanham Act, the Magnuson-Moss Warranty Act, or any other statutes, violations of or liability under any states' Lemon Laws or warranty statutes, fraud, misrepresentation, products liability, negligence, contract, quasi-contract, covenants (express or implied), unjust enrichment, and under any other common law, statutory, or equitable relief theories, or from any other source, and any claim or potential claim of any kind related arising from, related to, connected with, or in any way involving the Actions, the Subject Vehicles' airbags containing desiccated or non-desiccated driver's or front passenger Takata inflators, any and all claims involving the Takata Airbag Inflator Recalls that are, or could have been, defined, alleged, or described in the Actions or any amendments of the Actions.

19. Class Members are not releasing claims for or arising from personal injury, wrongful death or actual physical property damage arising from an accident involving a Subject Vehicle (other than damage to the Subject Vehicle and/or Inflator itself).

20. If a Class Member who does not timely and properly opt out commences, files, initiates, or institutes any new legal action or other proceeding against a Released Party for any claim released in this Settlement in any federal or state court, arbitral tribunal, or administrative or other forum, such legal action or proceeding shall be dismissed with prejudice at that Class Member's cost.

21. Recycler Plaintiffs and Class Members are not releasing and are expressly reserving

all rights relating to claims for personal injury, wrongful death, or actual physical property damage arising from an incident involving a Subject Vehicle (other than damage to the Subject Vehicle itself), including the deployment or non-deployment of a driver or passenger front airbag with a Takata inflator.

22. Recycler Plaintiffs and Class Members are not releasing and are expressly reserving all rights relating to claims against Excluded Parties, with the exception of the claims covered by Section VII.C of the Settlement Agreement.

23. Notwithstanding the Release set forth in the Settlement and this Order, Class Representatives and Class Members are not releasing and are expressly reserving all rights relating to claims against Excluded Parties, with the exception of the claims covered by Section VII.C of the Settlement.

24. By not excluding themselves from the Action and to the fullest extent they may lawfully waive such rights, all class representatives are deemed to acknowledge and waive Section 1542 of the Civil Code of the State of California and any law of any state or territory that is equivalent to Section 1542. Section 1542 provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

25. The Court orders that the Settlement Agreement shall be the exclusive remedy for all claims released in the Settlement Agreement for all Class Members not listed on Appendix B.

26. Therefore, except for those listed on Appendix B, all class representatives, Class Members, and their representatives are hereby permanently barred and enjoined from, either directly, through their representatives, or in any other capacity instituting, commencing, filing,

maintaining, continuing, or prosecuting against any of the Released Parties (as that term is defined in the Settlement Agreement) any action or proceeding in any court or tribunal asserting any of the matters, claims, or causes of action described. In addition, all class representatives, Class Members, and all persons and entities in active concert or participation with Class Members are permanently barred and enjoined from organizing Class Members who have not been excluded from the Class into a separate class for purposes of pursuing, as a purported class action, any lawsuit against the Released Parties based on or relating to the claims and causes of action in the complaint in the Action, or the facts and circumstances relating thereto, or the release in the Settlement Agreement. Pursuant to 28 U.S.C. §§1651(a) and 2283, the Court finds that issuance of this permanent injunction is necessary and appropriate in aid of its continuing jurisdiction and authority over the settlement as set forth in the Settlement Agreement and the Action.

27. Class Members are not precluded from addressing, contacting, dealing with, or complying with requests or inquiries from any governmental authorities relating to the issues raised in this class action settlement.

VI. OTHER PROVISIONS

28. Without affecting the finality of this Final Order Approving Class Action Settlement or the accompanying Final Judgment, the Court retains continuing and exclusive jurisdiction over the Action and all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order Approving Class Action Settlement and the accompanying Final Judgment, to protect and effectuate this Final Order Approving Class Action Settlement and the accompanying Final Judgment, and for any other necessary purpose. The Parties, the class representatives, and each Class Member not listed on Appendix B are hereby deemed to have irrevocably submitted to the exclusive jurisdiction of

this Court, for the purpose of any suit, action, proceeding, or dispute arising out of or relating to the Settlement Agreement or the applicability of the Settlement Agreement, including the exhibits to it, and only for such purposes.

29. If the Effective Date does not occur, certification of the Class shall be automatically vacated and this Final Order Approving Class Action Settlement and the accompanying Final Judgment, and other orders entered in connection with the Settlement Agreement and releases delivered in connection with the Settlement Agreement, shall be vacated and rendered null and void as provided by the Settlement Agreement.

30. Without further order of the Court, the Parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Settlement Agreement. Likewise, the Parties may, without further order of the Court, agree to and adopt such amendments to the Settlement Agreement (including exhibits) as are consistent with this Final Order Approving Class Action Settlement and the accompanying Final Judgment and do not limit the rights of Class Members under the Settlement Agreement.

31. Nothing in this Final Order Approving Class Action Settlement or the accompanying Final Judgment shall preclude any action in this Court to enforce the terms of the Settlement Agreement.

32. Neither this Final Order Approving Class Action Settlement nor the accompanying Final Judgment (nor any document related to the Settlement Agreement) is or shall be construed as an admission by the Parties. Neither the Settlement Agreement (nor its exhibits), this Final Order Approving Class Action Settlement, the accompanying Final Judgment, or any document related to the Settlement Agreement shall be offered in any proceeding as evidence against any of the Parties of any fact or legal claim; provided, however, that BMW and the Released Parties may

file any and all such documents in support of any defense that the Settlement Agreement, this Final Order Approving Class Action Settlement, the accompanying Final Judgment, and any other related document is binding on and shall have res judicata, collateral estoppel, or preclusive effect in any pending or future lawsuit by any person or entity who is subject to the release described above in Section VII.C of the Settlement asserting a released claim against any of the Released Parties.

33. A copy of this Final Order Approving Class Action Settlement shall be filed in, and applies to, each economic loss member action in this multidistrict litigation. Filed concurrently herewith is the Court's Final Judgment. Attached hereto as Appendix A is a list of the Subject Vehicles (identified by make, model, and year) to which these Orders and the Court's Final Judgment apply. Also attached hereto as Appendix B is a list of persons, entities, and organizations who have excluded themselves from (or "opted out" of) the Class.

DONE AND ORDERED in Chambers at Miami, Florida this 6th day of Nov 2023.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of record