

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-001027-198

SUPERIOR COURT
(Class Action Chambers)

DANIELLE DALLAIRE

Applicant

v.

KOBE STEEL, LTD.

and

NIPPON KOSHUHA STEEL CO. LTD.

and

SHINKO ALUMINUM WIRE CO. LTD.

and

SHINKO WIRE STAINLESS
COMPANY, LTD.

Defendants

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION FOR
SETTLEMENT PURPOSES ONLY AND TO APPROVE NOTICE
(ART. 575, 576, 579, 580, 581 and 590 C.C.P.)

TO THE HONOURABLE JUSTICE SYLVAIN LUSSIER, J.S.C., SITTING IN AND FOR
THE DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY SUBMITS THE
FOLLOWING:

History of Proceedings

1. On November 12, 2019, the Applicant filed an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* ("**Application**"), as appears from the Court record, on behalf of the following class:

“All Québec residents who (1) purchased or leased a new or used vehicle manufactured by Toyota (including Lexus), Honda (including Acura), Subaru, Mazda, Mitsubishi, Nissan (including Infiniti), Kia, Hyundai, Tesla or GM, or (2) purchased parts or replacement parts containing automotive metal manufactured by the Defendants, between 2002 and 2018.”

11. The parties now seek authorization of the class action for settlement purposes only and notice approval, in accordance with the terms of the Settlement Agreement.

Terms of Settlement

12. Under the Settlement Agreement, Kobe Steel, Ltd. has agreed to pay a Settlement Amount of CAD \$1,950,000 to resolve the litigation, without admission of liability. The parties have proposed that the settlement amount, after deduction for class counsel fees, disbursements (including costs of notice) and applicable taxes, and any payments to representative plaintiff(s) and the *Fonds d'aide aux actions collectives* (in respect of Québec's share), be distributed by way of *cy près* donation to the Law Foundation of British Columbia (77.4%) and Éducaloi in Québec (22.6%).

13. The Settlement Agreement is subject to approval in each of the BC and Québec courts and to a recognition and enforcement order in Ontario. Under the terms of the Settlement Agreement, the Plaintiff must first seek consent certification and notice approval in the BC Court. The BC Court granted consent certification and notice approval on December 5, 2019.

14. The Settlement Agreement provides that upon approval by the BC Court, authorization for settlement purposes and notice approval must also be sought in Québec.

15. If this honourable Court grants the present application, notice of the proposed settlement and of the settlement approval hearing will be published within 10 days thereafter.

16. Any persons wishing to opt out of the settlement must do so within 45 days of the publication of the notice.

17. Following the publication of notice and the expiry of the opt-out deadline, a second hearing will be held in the BC Court seeking final approval of the settlement. If the BC Court grants that order, the same approval will be sought in Québec. Following the Québec decision, a recognition and enforcement order will be sought in Ontario. Upon entry of the Québec or Ontario order, whichever is later, the Settlement Agreement

Settlement Agreement, in English and French and in long and short forms, at Schedule B.

26. The proposed notice is intelligible, informative and tailored to the circumstances of this case. The plan for posting and publication of the notice is national and is fair, reasonable and adequately protects the interest of the class members.

27. In light of the above, the class action should be authorized for settlement purposes only and the notice of the settlement approval hearing should be approved.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

ORDER that, except as otherwise specified in, or as modified by this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement;

AUTHORIZE the bringing of a class action against the Defendants for the purpose of settlement approval only, subject to the terms of the Settlement Agreement, Exhibit P-1;

APPOINT, for the purpose of settlement only, the Applicant, Danielle Dallaire, as the representative plaintiff of the following Québec Class:

“All Québec residents who (1) purchased or leased a new or used vehicle manufactured by Toyota (including Lexus), Honda (including Acura), Subaru, Mazda, Mitsubishi, Nissan (including Infiniti), Kia, Hyundai, Tesla or GM, or (2) purchased parts or replacement parts containing automotive metal manufactured by the Defendants, between 2002 and 2018.”

IDENTIFY, for the purpose of settlement only, the following issue to be dealt with collectively:

Did the Defendants breach any right protected under common law or under any federal or provincial legislation in relation to their quality control certifications?

ORDER that the Settlement Approval Hearing is to be held on a date at least forty-six (46) days after Notice is first published in accordance with the Settlement Agreement at a date and time and in a room to be determined by this honourable Court at the Montreal Courthouse, 1, Notre-Dame Street East, at which time this Court will be asked to decide:

ORDER that a copy of this Judgment shall be posted on the Settlement Website and on the Québec Class Action Register;

THE WHOLE, without legal costs.

Montréal, January 31, 2020

Klein Avocats Plaideurs Inc.

Klein Avocats Plaideurs Inc.

Attorneys for the Applicant

NOTICE OF PRESENTATION
(ART 146 and 574 al. 2 C.C.P.)

TO : Mes Claude Marseille, Ariane Bisailon and Matthew Millman-Pilon
Blake, Cassels & Graydon S.E.N.C.R.L./s.r.l.
1 Place Ville Marie, Bureau 3000, Montréal, Québec, H3B 4N8

Attorneys for the Defendants

TAKE NOTICE that the *Application for Authorization to Institute a Class Action for Settlement Purposes Only and to Approve Notice* will be presented before the Honourable Justice Sylvain Lussier of the Superior Court by way of telephonic hearing, at a date and time to be determined by this honourable judge.

GOVERN YOURSELVES ACCORDINGLY.

Montréal, January 31, 2020

KLEIN AVOCATS PLAIDEURS INC.

Klein Avocats Plaideurs Inc.
Attorneys for the Applicant