

Court File No. CV-17-11857-00CL

**TK HOLDINGS INC., TAKATA CORPORATION,
AND RELATED PARTIES**

**THIRD REPORT OF FTI CONSULTING CANADA INC., IN ITS
CAPACITY AS INFORMATION OFFICER**

March 8, 2018

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF TK HOLDINGS INC., AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Chapter 11 Debtors")**

**AND IN THE MATTER OF TAKATA CORPORATION, AND THOSE OTHER
COMPANIES LISTED ON SCHEDULE "B" HERETO (the "Japanese Debtors",
and collectively with the Chapter 11 Debtors, the "Debtors")**

**APPLICATION OF TK HOLDINGS INC. AND TAKATA CORPORAITON
UNDER SECTION 46 OF THE
*COMPANIES' CREDITORS ARRANGEMENT ACT***

**THIRD REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS INFORMATION OFFICER**

INTRODUCTION

1. On June 25, 2017, TK Holdings Inc. ("**TK Holdings**"), Takata Americas, TK Finance, LLC, TK China, LLC, TK Mexico Inc., TK Mexico LLC, Interiors in Flight, Inc., Takata Protection Systems Inc., TK Holdings de Mexico S. de R.L. de C.V., Industrias Irvin de Mexico, S.A. de C.V., Takata de Mexico, S.A. de C.V. and Strosshe-Mex, S. de R.L. de C.V. (collectively, the "**Chapter 11 Debtors**") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") (the "**Chapter 11 Proceedings**").

2. Concurrently, albeit on June 26, 2017, in Japan, Takata Corporation, Takata Kyushu Corporation and Takata Service Corporation (the “**Japanese Debtors**”, and collectively with the Chapter 11 Debtors, the “**Debtors**”) initiated civil rehabilitation proceedings with the 20th Department of the Civil Division of the Tokyo District Court under the Civil Rehabilitation Act of Japan (the “**Japanese Proceedings**”, and collectively with the Chapter 11 Proceedings, the “**Foreign Proceedings**”).
3. On June 27, 2017, the Chapter 11 Debtors obtained various “First Day Orders” from the U.S. Court.
4. On June 28, 2017, TK Holdings, as the U.S. foreign representative of the Chapter 11 Debtors (the “**Chapter 11 Foreign Representative**”), obtained an order of the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”), among other things, granting a stay of proceedings against the Chapter 11 Debtors pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) (the “**Initial Recognition Order**”).
5. Also on June 28, 2017, the Canadian Court issued a supplemental order (the “**Supplemental Recognition Order**”, and together with the Initial Recognition Order, the “**Canadian Recognition Orders**”) which, among other things, (i) appointed FTI Consulting Canada Inc. as an officer of the Court (the “**Information Officer**”), and (ii) recognized the “First Day Orders” of the U.S. Court in the Chapter 11 Proceedings. No recognition of the Japanese Proceedings was sought at that time.
6. On July 7, 2017, the U.S. Trustee in the Chapter 11 Proceedings appointed a statutory committee of unsecured creditors (the “**Creditors’ Committee**”) and a statutory committee of tort claimant creditors (the “**Tort Claimants’ Committee**”, and together with the Creditors’ Committee, the “**Committees**”).
7. On September 1, 2017, the Chapter 11 Foreign Representative and Takata Corporation, as the foreign representative of the Japanese Debtors (the “**Japanese**”).

- Foreign Representative**”, and collectively with the Chapter 11 Foreign Representative, the “**Foreign Representatives**”), obtained an order of the Canadian Court, among other things, amending the Canadian Recognition Orders to extend recognition and various rights to the Japanese Debtors from and after September 1, 2017.
8. On September 6, 2017, the U.S. Bankruptcy Court appointed Roger Frankel as the legal representative (the “**Future Claims Representative**”) for individuals who sustain injuries related to PSAN Inflators after the commencement of the Chapter 11 Proceedings.
 9. On October 13, 2017, the Foreign Representatives obtained Orders (the “**October 13 Orders**”) of the Canadian Court which, among other things, (i) recognized a claims process order granted in the Chapter 11 Proceedings (the “**U.S. Claims Order**”), (ii) recognized certain provisions of Orders granted in the Japanese Proceedings relating to a claims process, and (iii) recognized certain “Second Day Orders” made in the Chapter 11 Proceedings.
 10. The U.S. Claims Order provided that in order to provide notice to unknown potential creditors, including individuals who own, or may have owned, vehicles equipped with PSAN Inflators (as defined below) in Canada, the Chapter 11 Debtors would publish notice of the various claims bar dates as soon as practicable in 58 different publications in 38 countries, including publication in *The Globe and Mail* (National Edition) and *Le Devoir* in Canada. In accordance with the U.S. Claims Order, notice in *The Globe and Mail* (National Edition) was published on October 25, 2017 and in *Le Devoir* on October 27, 2017.
 11. On February 16, 2018, the Chapter 11 Debtors brought a motion for an order from the U.S. Bankruptcy Court confirming the *Fourth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors*, dated February 14, 2018 (the “**Fourth Amended Plan**”), which was subsequently modified by the *Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors* (the “**Fifth Amended Plan**” and as

- supplemented by the Plan Supplement and anything incorporated into the Fifth Amended Plan thereafter, including all exhibits, schedules, and supplements accorded therein, and as otherwise amended in accordance with the Confirmation Order (defined below), the “**Chapter 11 Plan**”). The confirmation hearing was held on February 16, 2018 (the “**Confirmation Hearing**”). A copy of the Findings of Fact, Conclusions of Law, and Order Confirming the Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors (the “**Confirmation Order**”) dated February 21, 2018 is attached to the Affidavit of Kenneth Bowling, sworn March 6, 2018 (the “**Bowling Affidavit**”).
12. The Chapter 11 Foreign Representative has brought a motion returnable March 14, 2018 to, among other things, seek recognition of the Confirmation Order by the Canadian Court.
 13. In its capacity as Information Officer, FTI Consulting Canada Inc. has filed the First Report dated September 28, 2017 (the “**First Report**”), and the Second Report dated December 28, 2017 (the “**Second Report**”) which provide further background in respect of the recognition proceedings. FTI Consulting Canada Inc. is maintaining a website where documents relating to the recognition proceedings are being made available: <http://cfcanada.fticonsulting.com/TKHoldingsInc/>. Further information on the Chapter 11 Proceedings can be found on the following website: <https://restructuring.primeclerk.com/takata/Home-Index>.
 14. This Third Report should be read in conjunction with the Bowling Affidavit.
 15. Terms not otherwise defined in this Third Report have the meanings ascribed to them in the Bowling Affidavit or the Chapter 11 Plan.

PURPOSE OF THIS REPORT

16. The purpose of this Third Report of the Information Officer is to provide the Canadian Court with information in respect of the motion brought by the Chapter 11 Foreign Representative, pursuant to Part IV of the CCAA, seeking an order (the “**Confirmation Recognition Order**”), among other things:

- (a) recognizing and giving full force and effect in all provinces and territories of Canada to the following Orders of the U.S. Bankruptcy Court:
- (i) the Confirmation Order;
 - (ii) the Corrected Order Pursuant to 11 U.S.C. §§105(a), 362, 363(b), 503, and 507, and Fed. R. Bankr. P. 4001 and 6004 (I) Authorizing Debtors to Enter Into and Perform Under Restructuring Support Agreement; (II) Approving Plan Sponsor Protections; and (III) Modifying the Automatic Stay (the “**Restructuring Support Agreement Order**”) dated December 13, 2017, attached as Exhibit “J” to the Bowling Affidavit;
 - (iii) the Order Pursuant to 11 U.S.C. §§502(b)(9) and 105(a), Fed. R. Bankr. P. 2002, 3001, 3002, 3003(c)(3), 5005, and 9007, and Local Rules 2002-1(e), 3001-1, and 3003-1 to (I) Establish Supplemental Deadline and Related Procedures for Filing Proofs of Claim by, and (II) Approve Procedures for Providing Notice of Supplemental Bar Date, and Other Important Dates and Information to, Certain Potential PSAN Inflator Claimants that Purchased Vehicles Subsequent to the Commencement of Chapter 11 Cases (the “**Supplemental Bar Date Order**”) dated December 18, 2017, attached as Exhibit “K” to the Bowling Affidavit;
 - (iv) the Order Pursuant to 11 U.S.C. §§105, 502, 1125, 1126, and 1128, Fed. R. Bankr. P. 2002, 3003, 3016, 3017, 3018, 3020, and 9006, and Local Rules 2002-1, 3017-1, and 9006-1 for Entry of an Order (I) Approving the Proposed Disclosure Statement and the Form and Manner of the Notice of a Hearing Thereon, (II) Establishing Solicitation

and Voting Procedures, and (III) Establishing Notice and Objection Procedures for Confirmation of the Debtors' Plan (the "**Solicitation Procedures Order**") dated January 5, 2018, attached as Exhibit "L" to the Bowling Affidavit; and

- (v) the Order Sustaining Debtors' Third Non-Substantive Omnibus Objection to Claims (Incorrect Debtor Claims) (the "**Claims Objection Order**") dated February 2, 2018, attached as Exhibit "M" to the Bowling Affidavit; and
 - (vi) the Order Pursuant to 11 U.S.C. §§ 502(c) and 105(a) Estimating the Maximum Amount of Certain Contingent, Unliquidated, and Disputed Claims for Purposes of Establishing Disputed Claims Reserves Under Debtors' Proposed Joint Chapter 11 Plan of Reorganization ("**Disputed Claims Reserve Order**"), dated February 26, 2018, attached as Exhibit "N" to the Bowling Affidavit;
- (b) authorizing that, upon the filing of a certificate (the "**Information Officer's Certificate**") certifying that (i) the Chapter 11 Proceedings have been terminated, and (ii) the Japanese Proceedings have been terminated: (a) the Stay Period (as defined in the Supplemental Recognition Order) shall be terminated, and (ii) the Canadian recognition proceedings shall be terminated;
- (c) ordering that, upon the filing of the Information Officer Certificate,
- (i) FTI Consulting Canada Inc. ("**FTI Consulting**") shall be discharged as Information Officer; and
 - (ii) FTI Consulting and its counsel, Bennett Jones LLP, and counsel to the Foreign Representatives in these

proceedings, McCarthy Tetrault LLP, shall be released and discharged;

- (d) ordering that the Information Officer shall only be required to file a further report upon becoming aware of the occurrence of a material change and that the Information Officer shall have no obligation or duty to make any inquiries or to conduct any investigations as to whether a material change has occurred; and
 - (e) approving the Second Report and the Third Report of the Information Officer and the activities of the Information Officer as described therein.
17. In preparing this Third Report, the Information Officer has relied solely on information and documents provided by the Foreign Representatives and their counsel. The Information Officer has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of this information in a manner that would comply with the Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.

BACKGROUND

18. Takata Corporation, together with its direct and indirect subsidiaries (“**Takata**”), is a manufacturer of automotive safety components, including seatbelts and airbags.
19. While Takata has no assets (other than retainers with professionals, including counsel) or operations in Canada, its products appear in vehicles in Canada since Takata sells its products to original equipment manufacturer customers (the “**OEMs**”), who in turn manufacture and sell automobiles in Canada.
20. Takata has experienced financial distress due to issues relating to certain of its airbag inflators containing phase-stabilized ammonium nitrate (“**PSAN Inflators**”), which have ruptured during deployment of the airbag. This led to wide-ranging recalls of vehicles in Canada, the United States and elsewhere.

21. Takata has been named as a defendant in a number of actions in Canada relating to the PSAN Inflators, including fourteen (14) uncertified class actions in Canada (five (5) of which have been consolidated into national class actions proceeding in Ontario (the “**Continuing Actions**”), four (4) of which have been dismissed, and five (5) of which are currently in abeyance (collectively, the “**Canadian Economic Loss Class Actions**”) and three personal injury actions (collectively the “**Canadian Personal Injury Actions**”).
22. Takata Corporation and TK Holdings, along with certain OEMs, are also defendants in putative competition class actions in four (4) Canadian provinces (British Columbia, Ontario, Saskatchewan, and Quebec) (the “**Canadian Competition Class Actions**”, and collectively with the Canadian Economic Loss Class Actions and Canadian Personal Injury Actions, the “**Canadian Actions**”). The Canadian Competition Class Actions purport to be on behalf of certain consumers in Canada whose claims relate to the sale of occupant safety systems, including airbags, seat belts, and steering wheels. In each of these actions, certain of Takata’s competitors are also named as defendants.
23. Takata also faces significant liabilities relating to the PSAN Inflators in the United States and elsewhere.
24. Prior to the commencement of the Chapter 11 Proceedings, the Chapter 11 Debtors conducted a robust sale and marketing process, which identified Joyson KSS Auto Safety, S.A. (together with its current or future Subsidiaries or Affiliates, the “**Plan Sponsor**”) as a purchaser of substantially all of Takata’s worldwide assets (excluding PSAN Inflator-related assets) (the “**Global Transaction**”).
25. After the commencement of the Chapter 11 Proceedings, the Chapter 11 Debtors have, among other things:

- (a) executed an Asset Purchase Agreement with the Plan Sponsor (the “**U.S. Acquisition Agreement**”) and other related documentation necessary to effect the Global Transaction;
- (b) conducted a global claims process (the “**Chapter 11 Claims Process**”);
- (c) carried out a court-approved solicitation and voting process;
- (d) prepared the Chapter 11 Plan, which among other things, implements the Global Transaction; and
- (e) participated in negotiations to obtain support for the Chapter 11 Plan from the major creditor groups (including a group of fifteen (15) of Takata’s OEM customers (the “**Consenting OEMs**”), the Creditors’ Committee, the Tort Claimants’ Committee, and the Future Claims Representative.

THE CHAPTER 11 PLAN

- 26. On February 16, 2018, the U.S. Bankruptcy Court granted the Confirmation Order, which, among other things, confirmed the Chapter 11 Plan, approved the Plan Supplement, and approved the Exhibits and Schedules to the Chapter 11 Plan, and any amendments, modifications and supplements thereto subject to reasonable acceptance of certain stakeholders’ committees in accordance with settlement agreements. Copies of the Plan Supplement, the Second Plan Supplement and Third Plan Supplement are attached as Exhibits “O”, “P” and “Q” respectively to the Bowling Affidavit.
- 27. The Chapter 11 Plan implements the Global Transaction, and among other things:
 - (a) provides for the sale and transfer of substantially all of the Chapter 11 Debtors’ non-PSAN assets to the Plan Sponsor free and clear of all Claims, interests, Liens and other encumbrances and liabilities of any kind or nature whatsoever;

- (b) provides for the consensual resolution and settlement of several Claims and controversies among the Chapter 11 Debtors, the Consenting OEMs, the Plan Sponsor, the Committees, the Future Claims Representative, and their respective constituents;
- (c) preserves the employment of substantially all of the Chapter 11 Debtors' 14,000 employees;
- (d) carves out certain of the PSAN-related assets from the sale to the Plan Sponsor and vests them in TK Holdings and certain of its subsidiaries upon TK Holdings' emergence from the Chapter 11 Proceedings (the "**Reorganized Debtors**") to continue limited production of PSAN Inflators and PSAN propellant to facilitate the recalls of PSAN Inflators;
- (e) vests the Warehoused PSAN Assets in a Delaware corporation established under the Chapter 11 Plan to comply with the Chapter 11 Debtors' obligations under the NHTSA Preservation Order and to continue the maintenance, shipping and disposal of the Warehoused PSAN Assets after the implementation of the Chapter 11 Plan;
- (f) ensures that Takata Corporation is able to comply with the Joint Restitution Order entered by the United States District court for the Eastern District of Michigan on February 27, 2017 in the case captioned U.S. v. Takata Corporation, Case No. 16-cr-20810 (E.D. Mich.) (the "**DOJ Restitution Order**") in connection with the settlement of the two (2)-year criminal investigation by the Department of Justice (the "**DOJ**") into Takata, in particular the USD\$975 million in restitution payments for the \$125 million personal injury and wrongful death restitution fund (the "**DOJ PI/WD Restitution Fund**") and the \$850 million OEM restitution fund established under the DOJ Restitution Order;

- (g) provides for all voting classes of claims and interests with recovery equal to or in excess of what would be received in a hypothetical liquidation scenario; and
 - (h) provides releases, including a release and a permanent injunction of certain PSAN PI/WD Claims against Protected Parties.
28. The Chapter 11 Plan also incorporates the terms of settlements reached with the Consenting OEMs, the Plan Sponsor, the Committees and the Future Claims Representative, which include the resolution of over \$4 billion of claims of the Consenting OEMs in exchange for an approximate payment of \$246 million, as further described below.
29. The Chapter 11 Plan contemplates a global restructuring of all claims against the Chapter 11 Debtors, including the claims of Canadian creditors. Under the Chapter 11 Plan, the claims of Canadian creditors are dealt with in the same manner as other similar claims in the same class.

Proofs of Claims filed by Canadian Creditors

30. As described in further detail in the Bowling Affidavit, the Chapter 11 Debtors received 46 proofs of claim from claimants with an address listed in Canada (the “**Filed Canadian Claims**”), which included:
- (a) Claims filed by twenty (20) PPICs, none of which were class claims;
 - (b) Class claims filed with respect to three (3) of the four (4) Canadian Competition Class Actions;
 - (c) Claims filed in all three (3) Canadian Personal Injury Actions, in the aggregate amount of CAD \$3.5 million;
 - (d) Claims filed by nine (9) General Canadian Creditors, in the aggregate amount of USD \$202,097.10; and

- (e) Claims filed by Subaru Canada Inc. and Mazda Canada Inc. further to the claims protocol for Consenting OEMs.
31. The process of reviewing claims to determine which claims are allowed or disallowed is ongoing.

Releases under the Chapter 11 Plan

32. The Chapter 11 Plan provides for broad releases (the “**Consensual Releases**”) of claims against (i) the Chapter 11 Debtors, (ii) the Plan Sponsor Parties, (iii) the Future Claims Representative, (iv) the Creditors’ Committee and Tort Claimants’ Committee and their respective members, and (v) the non-debtor affiliates of the Chapter 11 Debtors (except the affiliates that are not being acquired by the Plan Sponsor, Takata Corporation and TAKATA Sachsen GmbH) (collectively, the “**Released Parties**”), other than Claims or causes of action arising out of or related to any act or omission of a Released Party that is a criminal act or constitutes fraud, gross negligence, or wilful misconduct.
33. No Consenting OEM is a Released Party under the Chapter 11 Plan. However, the Chapter 11 Plan provides that each Consenting OEM will be released from any and all Claims by the Chapter 11 Debtors, the Reorganized Debtors, and the Chapter 11 Debtors’ Estates.
34. Section 10.6(a) of the Chapter 11 Plan provides that, as of the Effective Date, the Released Parties shall be deemed forever released and discharged by the Chapter 11 Debtors, the Reorganized Debtors (as defined in the Chapter 11 Plan), and the Chapter 11 Debtors’ Estates from any and all claims asserted or assertable on behalf of the Chapter 11 Debtors, the Reorganized Debtors, and the Chapter 11 Debtors’ Estates.

35. Section 10.6(b) of the Chapter 11 Plan provides that the following parties will be determined to have consented to the Consensual Releases in favour of the Released Parties: (i) holders of all claims, other than Consenting OEMs, who vote to accept the Chapter 11 Plan; (ii) holders of all claims, other than Consenting OEMs, that are Unimpaired under the Chapter 11 Plan; (iii) holders of all claims, other than Consenting OEMs, whose vote to accept or reject the Chapter 11 Plan is solicited but who do not vote either to accept or reject the Plan; (iv) the holders of all claims, other than Consenting OEMs, or interests who vote, or are deemed, to reject the Chapter 11 Plan but do not opt out of granting the releases set forth therein; (v) the holders of claims, other than Consenting OEMs, and interests who are given notice of the opportunity to opt out of granting the releases set forth therein but who do not opt out of granting the releases; and (vi) all other holders of claims, other than Consenting OEMs, and interests to the maximum extent permitted by law. The Chapter 11 Debtors' solicitation materials provided clear conspicuous notice of both the Consensual Releases and the process for opting out of the Consensual Releases.

Effect of Chapter 11 Plan on PSAN PI/WD Claims

36. The Chapter 11 Plan provides for the establishment of a PSAN PI/WD Trust. Sections 10.6(c) and 10.7 of the Chapter 11 Plan provide for the release and permanent injunction of certain PSAN PI/WD Claims against the "Protected Parties". The Protected Parties include the following: (i) certain non-debtor affiliates of the Chapter 11 Debtors; (ii) the Participating OEMs (but no other OEMs), only to the extent certain conditions are met; and (iii) the Plan Sponsor Parties. An OEM that is not a Participating OEM shall not be released from liability for a PSAN PI/WD Claim.
37. Pursuant to Section 10.7 of the Chapter 11 Plan, all Persons that have held or asserted, that hold or assert, or that will hold or assert any PSAN PI/WD Claims against the Protected Parties shall be permanently and forever stayed, restrained, and enjoined from taking any action for the purposes of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery from any

such Protected Party with respect to any such PSAN PI/WD Claims. Liability for all such PSAN PI/WD Claims against the Protected Parties will be channelled to and assumed by the PSAN PI/WD Trust by the “Channeling Injunction”.

38. Claimants with PSAN PI/WD Claims affected by the Channeling Injunction will receive recovery of the full amount of their PSAN PI/WD Claim against the Participating OEM, as determined by the Special Master of the DOJ PI/WD Restitution Fund (“**Special Master**”) in accordance with the terms of the PSAN PI/WD Trust. All PSAN PI/WD Claims are preserved and all PSAN PI/WD Claimants retain full rights to proceed against non-Participating OEMs in the tort system.
39. Importantly, PSAN PI/WD Claims against Participating OEMs are only channelled to the PSAN PI/WD Trust and released as against the Participating OEM if the claimant is a U.S. citizen, is injured as a result of an incident occurring in the U.S. or its territories, or the claim involves a vehicle registered in the U.S. or its territories or possessions (the “**U.S. Requirements**”). Any Canadian PSAN PI/WD claimants who suffer damages in Canada in a Canadian vehicle would have their PSAN PI/WD claim against the Chapter 11 Debtors released but will be able to continue pursue claims against Participating OEMs (and non-Participating OEMs) in the tort system.

Effect of Chapter 11 Plan on Consenting OEMs

40. Consenting OEMs have the opportunity to get the benefit of the release and permanent injunction of certain PSAN PI/WD Claims (which do not include Canadian claims for injuries suffered in Canada in a Canadian vehicle) by electing to become Participating OEMs. Each Consenting OEM that elects to become a Participating OEM will contribute its respective amount of funds to satisfy and make payments to relevant holders of PSAN PI/WD Claims. Such PSAN PI/WD Claims against Consenting OEMs that elect to become Participating OEMs and pay their portion of the PSAN PI/WD Claims in full, are released and channelled to the PSAN PI/WD Trust. Other than such release for Participating OEMs from

PSAN PI/WD Claims and the releases provided by the Chapter 11 Debtors in favour of the Consenting OEMs, no other claims against the OEMs, including Consenting OEMs and OEMs that do not elect to become Participating OEMs and claims against Participating OEMs by claimants that do not meet the U.S. requirements, are released pursuant to the Chapter 11 Plan.

41. In the Confirmation Order, the U.S. Bankruptcy Court found that:
- (a) the releases under the Chapter 11 Plan, as well as the Channeling Injunction, were adequately disclosed and explained in the Disclosure Statement, voting ballots, and the Chapter 11 Plan;
 - (b) the Consensual Releases were consensual; and
 - (c) the releases of non-Debtors and the related injunction “are fair to holders of claims and are necessary to the proposed reorganization”, “were supported by fair, sufficient, and adequate consideration provided by or for [the parties being released]” and were “critical to the success of the Plan”.

Classification and Treatment of Canadian Creditors in the Chapter 11 Plan

42. Canadian creditors other than OEMs are each in Class 5, Class 6 or Class 7 of the Chapter 11 Plan. Each such class is briefly described below:
- (a) Class 5 contains the general unsecured Claims of individuals who have (or may) suffer a personal injury or harm allegedly caused by the Chapter 11 Debtors’ PSAN Inflatons;
 - (b) Class 6 contains the general unsecured Claims of all the Debtors’ trade and other creditors, including contingent, unliquidated, and disputed litigation Claims and any Claims asserted by individuals alleging to have suffered an economic loss related to the Chapter 11 Debtors’ PSAN Inflatons; and

- (c) Class 7 contains the general unsecured Claims of individuals who have suffered a personal injury or harm caused by a Takata Product, other than the Chapter 11 Debtors' PSAN Inflator-related products.
43. Of the Filed Canadian Claims to the extent allowed: (i) the filed Canadian Competition Class Action claims, General Canadian Creditors and Canadian PPICs claims all appear to fall within Class 6 of the Chapter 11 Plan; (ii) the filed Canadian Personal Injury Actions fall within Class 5 or Class 7 of the Chapter 11 Plan; and (iii) the Canadian OEMs (Mazda and Subaru) that filed claims fall within Class 4 of the Chapter 11 Plan. There was also one claim filed on a secured basis which falls within Class 1 of the Chapter 11 Plan and, to the extent allowed, will be paid in full under the Chapter 11 Plan.
44. The claims of all Canadian creditors against the Chapter 11 Debtors and the Released Parties will be released. The Chapter 11 Plan provides for an approximate recovery of 0.1% of 0.4% to holders of General Unsecured Claims whether the Claims are included in Class 4 (OEM Unsecured Claim), Class 5 (PSAN PI/WD Claims), Class 6 (Other General Unsecured Claims), or Class 7 (Other PI/WD Claims). Each of these Classes is expected to receive the same percentage recovery from the Chapter 11 Debtors' estates.
45. Further, the Plan Sponsor and the Consenting OEMs have agreed to make additional contributions to the PSAN PI/WD Trust (for the benefit of claimants with PSAN PI/WD Claims and Other PI/WD Claims) and the Support Party Creditor Fund (for the benefit of Eligible Creditors, which include vendors and suppliers with whom the Plan Sponsor, Reorganized Debtors or Consenting OEMs may do business going forward). The U.S. Court determined that such recoveries do not change the equal treatment provided within and among each class as they do not come from the Chapter 11 Debtors' estate. However, such recoveries do represent additional source of funds available for such creditors. The DOJ PI/WD Restitution Fund similarly represents an additional source of funds for eligible PI/WD claims.

46. As discussed in the Bowling Affidavit, a liquidation analysis prepared by PricewaterhouseCoopers LLP demonstrates that all voting classes of claims and interests will recover substantially more value under the Chapter 11 Plan than through a liquidation of the Chapter 11 Debtors. Accordingly, each holder of a claim or interest against the Chapter 11 Debtors either has (i) accepted the Chapter 11 Plan, or (ii) will receive or retain under the Chapter 11 Plan on account of such claim or interest, property of a value, as of the Effective Date of the Chapter 11 Plan, that is not less than the amount that such holder would receive or retain if the Chapter 11 Debtors were liquidated.
47. Notably, the holders of General Unsecured Claims are not expected to recover any property in a hypothetical liquidation whereas, as of December 31, 2017, approximately \$69 million is being made available for unsecured creditors under the Chapter 11 Plan.

Treatment of Canadian Personal Injury Claims against OEMs

48. To the extent that any alleged personal injuries were caused by a PSAN Inflator malfunction, a Canadian Personal Injury Action claimant with an allowed claim will be in Class 5 and have a claim against the PSAN PI/WD Trust. Such a claim, if made by a Canadian claimant and arising from an incident in Canada in a Canadian-registered vehicle, will not be released against any third-party OEM defendants. To the extent that a Canadian Personal Injury Action claimant meets the U.S. Requirements, the claim is also released against a third-party OEM defendant if that OEM has elected to become a Participating OEM and paid its portion of such personal injury claim in full (subject to opting out). The interests of any future holders of PSAN PI/WD Claims will be represented by a Future Claims Representative.

49. To the extent that any alleged injuries were caused by a Takata product other than a PSAN Inflator, a Canadian Personal Action claimant with an allowed claim will be in Class 7, and will receive its *pro rata* share of the Other PI/WD Funds which will be administered by the Special Master in connection with the PSAN PI/WD Trust. Such claims will not be released against any third-party OEM defendant under the Chapter 11 Plan.

Canadian Economic Loss and Other Claims against OEMs

50. The Canadian Class Actions claims will be released against the Chapter 11 Debtors. However, section 10.6(b) of the Chapter 11 Plan provides that OEMs are not released from any economic loss actions, regardless of whether they elect to become Participating OEMs.
51. Similarly, the OEMs and any other non-Takata co-Defendants are not released from the Canadian Competition Class Actions although such claims are released against the Chapter 11 Debtors.

Voting Results and Cram down

52. The results of the voting by various classes of the Chapter 11 Plan are detailed in the Bowling Affidavit. The various classes entitled to vote on the Chapter 11 Plan each approved the Chapter 11 Plan by at least 74.38% in number and, other than in the subclass of Class 6 relating to TK Holdings, by at least 74.38% in value.
53. In one of the subclasses of Class 6 relating to TK Holdings, a single vote cast by the Commonwealth of Puerto Rico (“**Puerto Rico**”), in the approximate amount of \$1.8 billion, affected the percent acceptance by value (given the large value of that claim). The Chapter 11 Debtors classified claims made by various U.S. states (the “**States**”) as Class 9 – Subordinated Claims on the basis that they are penalties or punitive claims and would harm or reduce recoveries for other creditors (the “**State Subordination**”). The Chapter 11 Debtors had intended to classify and/or reclassify the claims of Puerto Rico and other Governmental Units in the same manner.

54. At the hearing for the Confirmation Order, the U.S. Bankruptcy Court did not make a finding with respect to the classification of the Puerto Rico claim in Class 9 as a matter of process the matter was not technically before the Court at the Confirmation Hearing, although the Court held that the claims of the Objecting States were each properly classified as Class 9 – Subordinated Claims, rejecting their objections.
55. The Information Officer understands that, under the U.S. Bankruptcy Code, a plan may be confirmed notwithstanding the rejection or deemed rejection by a class of claims or equity interests so long as the plan does not discriminate unfairly and is fair and equitable. This mechanism is known colloquially as a “cram down”.
56. The Information Officer understands that a plan does not discriminate unfairly if (a) the legal rights of a dissenting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class, and (b) the “fair and equitable” requirement is met as set forth in section 1129(b)(2) of the U.S. Bankruptcy Code. If those requirements are satisfied, the court may “cram down” a plan over a dissenting vote of an impaired class or classes of claims or interests.
57. The U.S. Bankruptcy Court, in confirming the Chapter 11 Plan, commented that there was sufficient support by creditors for confirmation of the Chapter 11 Plan whether the Puerto Rico Claim is reclassified as a Class 9 claim or as a matter of cram down.
58. The Confirmation Order provides that (i) the Chapter 11 Plan did not discriminate unfairly because holders of claims or interests with similar legal rights will not be receiving materially different treatment under the Chapter 11 Plan; and (ii) the Chapter 11 Plan was fair and equitable with respect to each class of claims or interests that was impaired or that had not accepted the Plan.

59. Subsequent to the Confirmation Hearing, the Chapter 11 Debtors served a motion to reclassify the entirety of the Puerto Rico Claim as a Class 9 Subordinated Claims. The proposed hearing date for this motion is March 13, 2018.

Appeal

60. The Information Officer understands that the Confirmation Order is not currently stayed and no motion has been brought to obtain such a stay. Further, it is not a condition precedent to implementation of the Chapter 11 Plan that there be no appeal extant with respect to the Confirmation Order and, the Information Officer understands that, the Chapter 11 Debtors do not expect any appeal to impede or prevent consummation of the Global Transaction. Accordingly, the Information Officer understands that the Chapter 11 Debtors intend to proceed to implement the Chapter 11 Plan notwithstanding any appeal.

Confirmation Order should be Recognized by the Canadian Court

61. Pursuant to Section 9.2(u) of the Chapter 11 Plan, it is a condition precedent to the implementation of the Chapter 11 Plan that “a Canadian court of competent jurisdiction shall have entered a Final Order recognizing the Confirmation Order entered by the Bankruptcy Court”.
62. The Information Officer supports the granting of the relief requested by the Chapter 11 Foreign Representative for the following reasons:
- (a) the U.S. Bankruptcy Court has held, among other things, that the Chapter 11 Plan (i) complied with all applicable provisions of the Bankruptcy Code, (ii) was proposed in good faith and with the legitimate and honest purpose of maximizing the estate and recoveries to holders of claims, and (iii) was in the best interest of creditors;

- (b) consummation of the Chapter 11 Plan and the closing of the Global Transaction preserves the going-concern value of the Chapter 11 Debtors' businesses, maximizes creditor recoveries, provides for equitable distribution to stakeholders, and protects the jobs of the Chapter 11 Debtors' employees;
- (c) recognition of the Confirmation Order is necessary for the protection of the Chapter 11 Debtors' property and the interests of creditors in the implementation of the Chapter 11 Plan and the consummation of the Global Transaction; and
- (d) the claims of Canadian creditors, regardless of which class such claims are in, are dealt with under the Chapter 11 Plan in the same manner as other claims in the same class.

RECOGNITION OF RELATED ORDERS

- 63. In addition to the Plan Confirmation Order, the Chapter 11 Foreign Representative is seeking recognition of the Restructuring Support Agreement Order, the Supplemental Bar Date Order, the Solicitation Procedures Order, the Claims Objection Order and the Disputed Claims Reserve Order.
- 64. As noted in the Second Report, on November 16, 2017 the Chapter 11 Debtors, the Plan Sponsor and the Consenting OEMs entered into the U.S. RSA. On December 13, 2017, the U.S. Bankruptcy Court issued the Restructuring Support Agreement Order which, among other things, approved the RSA.
- 65. On December 18, 2017, the U.S. Bankruptcy Court issued the Supplemental Bar Date Order which established a supplemental claims and noticing process for PPICs that purchased vehicles between August 2, 2017 and December 19, 2017. Notice of the Supplemental Bar Date was published in Canada approximately three weeks prior to the Supplemental PPIC Bar Date.

66. On January 5, 2018, the U.S. Bankruptcy Court issued the Solicitation Procedures Order which approved the Disclosure Statement, established procedures for the solicitation, receiving and tabulation of votes and objections, and set the Voting Deadline. The Solicitation Package contemplated in the Solicitation Procedures Order was sent to all Canadian creditors with Filed Canadian Claims.
67. The U.S. Bankruptcy Court also issued several orders which sustained objections of the Chapter 11 Debtors to certain proofs of claim filed in the U.S. claims process. Only one such order (the Claims Objection Order) affected a Filed Canadian Claim. That order, which the U.S. Foreign Representative seeks to recognize, sustained the Chapter 11 Debtors' objection to certain listed claims (including one filed by a Canadian creditor) that were asserted against the incorrect Chapter 11 Debtor. As a result of the Claims Objection Order, that particular Filed Canadian Claim was reclassified as being asserted against the correct debtor, thereby helping to maintain a more accurate claims registry.
68. The Disputed Claims Reserve Order estimates that the Disputed Claims in Class 6 (General Unsecured Claims) and Class 7 (Other PI/WD Claims) to be in aggregate amount of \$1,532,200,000 for the purposes of determining the Disputed Claims Reserve to be set for these claims under the Chapter 11 Plan.
69. The Information Officer understands that the recognition of these orders of the U.S. Court by the Canadian Court is necessary for the protection of the Chapter 11 Debtors' property and the interests of creditors in the implementation of the Chapter 11 Plan and the consummation of the Global Transaction. Accordingly, the Information Officer supports their recognition.

ACTIVITIES OF THE INFORMATION OFFICER

70. The Chapter 11 Foreign Representative is seeking approval of the Second Report and the Third Report, and the activities of the Information Officer set out therein.
71. The activities of the Information Officer since its First Report have included:

- (a) updating and maintaining the Information Officer's website;
- (b) reviewing materials filed to date by various parties in the Chapter 11 Proceedings and the CCAA recognition proceedings, including the Chapter 11 Plan;
- (c) discussions with legal counsel and the Chapter 11 Debtors' Canadian legal counsel regarding matters relevant to the CCAA recognition proceedings and the Chapter 11 Proceedings, including the substance of the Chapter 11 Plan, the treatment of Canadian creditors pursuant to the Chapter 11 Plan, and the implementation of the Chapter 11 Plan;
- (d) reviewing draft materials of the Chapter 11 Foreign Representative in connection with the CCAA recognition proceedings;
- (e) preparing for and attending at Court for the scheduled hearings pertaining to the CCAA recognition proceedings;
- (f) preparing the Second Report and the Third Report; and
- (g) responding to interested parties who contacted the Information Officer by way of the Information Officer's hotline or the Information Officer's website.

TERMINATION OF PROCEEDINGS

72. The Chapter 11 Plan contemplates the appointment of a person (the "**Legacy Trustee**") to, among other things, make certain distributions, resolve claims and manage claims reserves. Once all Disputed Claims (other than Disputed PSAN PI/WD Claims) have been allowed or disallowed, all assets distributed in accordance with the Chapter 11 Plan, and all Allowed Claims (other than PSAN/PI WD Claims) have been satisfied, the Legacy Trustee shall seek authority from the U.S. Bankruptcy Court to close the Chapter 11 Proceedings.

73. The Confirmation Recognition Order contemplates that the Information Officer shall file the Information Officer's Certificate certifying that (i) the Chapter 11 Proceedings have been terminated, and (ii) the Japanese Proceedings have been terminated. The Chapter 11 Foreign Representative requests that the Court authorize that, upon the Information Officer filing the Information Officer's Certificate, the Stay Period and these Canadian recognition proceedings shall be terminated.
74. The Chapter 11 Foreign Representative has also requested that, upon the filing of the Information Officer's Certificate:
- (a) FTI Consulting be discharged as the Information Officer and from all duties associated therewith, provided however, that notwithstanding its discharge, FTI Consulting shall remain the Information Officer for the performance of such incidental duties as may be required to complete the administration of these proceedings; and
 - (b) FTI Consulting and its counsel, Bennett Jones LLP, and counsel to Takata in these proceedings, McCarthy Tetrault LLP, are released and discharged.
75. The Chapter 11 Foreign Representative has also requested that, notwithstanding section 14(b) of the Supplemental Recognition Order (as amended), the Information Officer is only required to file a further report upon becoming aware of the occurrence of a material change, and for greater certainty, the Information Officer will have no duty or obligation to many any inquiries or to conduct any investigations as to whether a material change has occurred. The Information Officer believes that the requested change to the reporting requirement is appropriate in the circumstances, and will reduce costs associated with the ongoing Canadian proceeding.

76. The Information Officer is of the view that the foregoing will enable the CCAA recognition proceedings to be efficiently concluded and supports the relief sought by the Chapter 11 Foreign Representative in this regard.

RECOMMENDATION

77. Based on the foregoing, the Information Officer respectfully recommends that this Court grant the relief requested by the Chapter 11 Foreign Representative.

Dated this 8th day of March 2018.

FTI Consulting Canada Inc., solely in its capacity as the Information Officer of the Debtors, and not in its personal or in any other capacity



Jeffrey Rosenberg
Senior Managing Director

IN THE MATTER OF APPLICATION OF AN APPLICATION BY TK HOLDINGS INC. AND TAKATA CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

Court File No. CV-17-11857-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**THIRD REPORT OF
FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS
INFORMATION OFFICER**

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