

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE PAUL M. PERELL)

THURSDAY, THE 2nd
DAY OF APRIL, 2020

B E T W E E N :

PETER SCOTT HARRIS

Plaintiff

- and -

BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT and
BMW CANADA INC.

Defendants

**ORDER
(CERTIFICATION)**

THIS MOTION, made by the Plaintiff, for an order certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff, was heard on March 4 and 5, 2020, at the courthouse at 130 Queen Street West, Toronto, Ontario.

ON READING the fresh notice of motion, dated January 13, 2020, the affidavit of Peter Scott Harris, sworn November 27, 2018, the affidavit of Nicholas Tkach, sworn November 21, 2018, the affidavit of Brian D. James, sworn October 5, 2018, the affidavit of John-Otto Phillips, sworn November 5, 2019, the affidavit of Dr. Alan Banack, sworn July 4, 2019, the affidavit of Gordon Farrish sworn June 6, 2019, the affidavit of Gordon Farrish sworn August 23, 2019, the transcript from the cross-examination of Peter Scott Harris, the transcript from the cross-examination of Brian D. James, the transcript from the cross-examination of Gordon Farrish, the fresh as amended statement of claim, filed August 29, 2018, the fresh as amended statement of



defence, filed June 4, 2019, the factum and reply factum of the Plaintiff, the responding factum of the Defendants, the books of authorities of the parties, the timeline prepared by the lawyers for the Plaintiff, and on hearing the submissions of the lawyers for the parties,

1. **THIS COURT ORDERS** that this action is certified as a class proceeding under ss. 2 and 5 of the *Class Proceedings Act, 1992*, SO 1992, c. 6.

2. **THIS COURT ORDERS** that the Class is described as:

All persons or entities in Canada who are or were owners or lessees of:
(i) a 2002, 2003, 2004, 2005 or 2006 model year Mini Cooper or Mini Cooper S; or
(ii) a 2005, 2006, 2007 or 2008 model year Mini Cooper Convertible or Mini Cooper S Convertible (collectively, the Class Cars) and their estates, executors, successors or assigns.

3. **THIS COURT ORDERS** that Peter Scott Harris is appointed as the representative plaintiff.

4. **THIS COURT DECLARES** that the following causes of action are asserted against the Defendants on behalf of the Class:

- a) negligent design of the Class Cars;
- b) negligent manufacture of the Class Cars;
- and,
- c) breach of duty to warn.

5. **THIS COURT DECLARES** that the relief sought by the Class is: damages for costs that have been incurred or will be incurred to repair the allegedly defective power steering in the Class Cars, as well as any damages for property damage and personal injury caused by the allegedly defective power steering system, punitive damages, and interest.

6. **THIS COURT ORDERS** that the following common issues are certified:

- (1) Were the Class Cars designed and manufactured by Bayerische Motoren Werke Aktiengesellschaft (BMW AG) with one or more design or manufacturing defects that can cause the loss of power steering assist, engine component melting or smouldering, and/or a vehicle fire (a Defect)?
- (2) If the answer to Common Issue #1 is yes, is any such Defect dangerous and/or does any such Defect render the Class Cars unfit for their intended purpose?
- (3) If the answer to Common Issue #2 is yes, when did the Defendants know or ought they to have known of the dangerous Defect(s)?
- (4) Did BMW AG owe a duty of care to the Class Members with respect to the design, manufacturing, and/or testing of the Class Cars?
- (5) If so, did BMW AG breach the standard of care owed to Class Members in respect of the design, manufacturing, and/or testing of the Class Cars?
- (6) Did BMW Canada, Inc. (BMW Canada) owe a duty of care to the Class Members with respect to the distribution of the Class Cars?
- (7) If so, did BMW Canada breach the standard of care owed to the Class Members by distributing the Class Cars containing a dangerous Defect?
- (8) Did the Defendants, or either one thereof, owe a duty of care to (i) warn the Class Members of the dangerous Defect(s), and/or (ii) to recall and repair the Class Cars?
- (9) If so, did either or both of the Defendants breach the relevant standard of care by (i) failing to warn the Class Members of the dangerous Defect(s), and/or (ii) failing to recall and repair the Class Cars?

- (10) Can the Class Members assert a claim for pure economic loss, including the cost of repairs to the Class Cars, and diminution in value of the Class Cars?
- (11) If the answer to Common Issue #10 is yes, what is the cost to repair the Defect(s)?
- (12) Can the Class Members elect to waive the tort and seek disgorgement of the profits earned by the Defendants on the Class Cars? If so, what is the amount of such profit?
- (13) Does the conduct of the Defendants, or either one thereof, warrant an award of punitive damages? If so, in what amount?

7. **THIS COURT ORDERS** that notice of certification of this proceeding as a class proceeding shall be given to the Class members in a manner to be approved by the court.

8. **THIS COURT ORDERS** that Class members may opt out of this class proceeding by delivering to Class Counsel, or as otherwise directed by the court, a written and signed statement confirming their intent to opt out, no later than sixty (60) days following first publication of the notice of certification.

9. **THIS COURT ORDERS** that, if the parties cannot agree on the matter of costs, they may make submissions in writing beginning with the Plaintiff's submissions within twenty days of the date hereof, followed by the Defendants' submissions within a further twenty days.

Perell, J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP - 8 2020

PER / PAR:

[Signature]

The Honourable Justice Paul M. Perell

Peter Scott Harris
PLAINTIFF

and
Bayेरische Motoren Werke Aktiengesellschaft et al.
DEFENDANTS

Court File No. CV-14-497479 00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

CERTIFICATION ORDER

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