

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

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

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

May 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 CORPORATION
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

FOURTH 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 (the “**Japanese Court**”) under the Civil Rehabilitation Act of Japan (the “**Japanese Proceedings**”, and collectively with the Chapter 11 Proceedings, the “**Foreign Proceedings**”).
3. The Japanese Court issued orders on June 26, 2017 and June 28, 2017, among other things: (i) appointing a supervisor over the Japanese Proceedings, and (ii) approving the commencement of the Japanese Debtors’ proceedings under the Civil Rehabilitation Act of Japan and establishing a schedule for the civil rehabilitation proceedings (the “**Japanese Orders**”).
4. On June 27, 2017, the Chapter 11 Debtors obtained various “First Day Orders” from the U.S. Court.
5. 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**”).
6. 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.

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 November 14, 2017, the Japanese Proceedings were recognized as “foreign main proceedings” in the United States under Chapter 15 of the U.S. Bankruptcy Code.
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 the Japanese Orders 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**”) and the U.S. Bankruptcy Court issued 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**”) on February 21, 2018.

12. On March 14, 2018, the Canadian Court recognized the Confirmation Order.
13. The Japanese Foreign Representative has brought a motion returnable May 17, 2018 for an order that, among other things, recognizes and gives full force and effect in all provinces and territories of Canada to the February 6, 2018 approval (the “**Japanese Sale Approval**”) issued by the Japanese Court in the Japanese Proceedings authorizing the Japanese Debtors, pursuant to Article 42(1) of the Civil Rehabilitation Act, to proceed with the sale of assets not related to airbag inflators containing phase-stabilized ammonium nitrate (“**PSAN Inflators**”) to Joyson KSS Auto Safety S.A. (“**KSS**”, collectively with one or more of its current or newly-formed subsidiaries and/or affiliates, the “**Plan Sponsor**”) in accordance with an asset purchase agreement dated as of November 16, 2017 by and among the Japanese Debtors, KSS, and, solely for the purposes of Section 7.22 thereof, KSS Holdings, Inc. (as amended, restated, or supplemented from time to time, the “**Japan APA**”).

14. In its capacity as Information Officer, FTI Consulting Canada Inc. has filed the First Report dated September 28, 2017 (the “**First Report**”), the Second Report dated December 28, 2017 (the “**Second Report**”) and the Third Report dated March 8, 2018 (the “**Third 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>.
15. Terms not otherwise defined in this Fourth Report of the Information Officer (the “**Fourth Report**”) have the meanings ascribed to them in the Affidavit of Hiroshi Kasuya, sworn April 9, 2018 (the “**Kasuya Affidavit**”) or the Chapter 11 Plan. This Fourth Report should be read in conjunction with the Kasuya Affidavit.

PURPOSE OF THIS REPORT

16. The purpose of this Fourth Report is to provide the Canadian Court with information regarding:
 - (a) certain developments in the Chapter 11 Proceedings since the date of the Third Report; and
 - (b) the motion brought by the Japanese Foreign Representative, pursuant to Part IV of the CCAA, seeking, among other things, recognition of the Japanese Sale Approval, and approval of this Fourth Report and the activities of the Information Officer as described herein.
17. In preparing this Fourth 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**”), was 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 sold its products to original equipment manufacturer customers (the “**OEMs**”), who in turn manufacture and sell automobiles in Canada.
20. Takata experienced financial distress due to issues relating to certain of its airbag inflators containing 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. As at the time of the insolvency filings, Takata had 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 had been consolidated into national class actions proceeding in Ontario, four (4) of which had been dismissed, and five (5) of which were in abeyance, and three personal injury actions.
22. Takata Corporation and TK Holdings, along with certain OEMs, were also defendants in putative competition class actions in four (4) Canadian provinces (British Columbia, Ontario, Saskatchewan, and Quebec) (the “**Canadian Competition Class Actions**”). The Canadian Competition Class Actions purported to be on behalf of certain consumers in Canada whose claims related to the sale of occupant safety systems, including airbags, seat belts, and steering wheels. In each of these actions, certain of Takata’s competitors were also named as defendants.
23. Takata also faced 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 the Plan Sponsor as a purchaser of substantially all of Takata's worldwide assets (excluding PSAN Inflator-related assets) (the "**Global Transaction**").
25. The USD \$1.588 billion purchase price offered by the Plan Sponsor considerably exceeded the price offered by other sponsor candidates and is sufficient to fulfil the Debtors' obligation to pay USD\$850 million pursuant to a restitution order with the U.S. Department of Justice (the "**DOJ Restitution Order**").
26. The Global Transaction involved the transfer of non-PSAN Inflator assets to the Plan Sponsor as follows, among other things:
 - (a) by Takata entities in Japan and other Asian countries pursuant to the Japan APA, which is a transfer that occurred outside of the rehabilitation plan in Japanese Proceedings but was approved by the Japanese Court in the Japanese Proceedings;
 - (b) by Takata entities in the United States, Mexico and South America pursuant to an asset purchase agreement and the Chapter 11 Plan; and
 - (c) by Takata entities in Europe pursuant to an asset purchase agreement outside of an insolvency process.
27. The Information Officer is pleased to report that the Global Transaction successfully closed on April 10, 2018, with the relevant Takata entities completing the transfer of substantially all of their non-PSAN assets worldwide to KSS.

DEVELOPMENTS IN CHAPTER 11 PROCEEDINGS SINCE THIRD REPORT*Settlement of Appeal*

28. The results of the voting by various classes of the Chapter 11 Plan were described in the Third Report. As described in the Third Report, in one of the subclasses of Class 6 relating to TK Holdings, a single vote cast by the Commonwealth of Puerto Rico, in the approximate amount of \$1.8 billion, affected the percent acceptance by value (given the large value of the claim). The Chapter 11 Debtors classified claims made by various U.S. 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 Chapter 11 Debtors had intended to classify and/or reclassify the claims of Puerto Rico in the same manner.
29. 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 (the “**Puerto Rico Claim**”) in Class 9 as the matter was not before the Court at that time.
30. 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 was reclassified as a Class 9 claim or as a matter of cram down.
31. Since the date of the Third Report, the U.S. Court has, among other things:
 - (a) authorized and approved a settlement agreement by and among Takata, the State of Hawaii, by its Office of Consumer Protection, the State of New Mexico, by its Attorney General, and the Government of the United States Virgin Islands, by its Attorney General (collectively, the “**States**”);

- (b) authorized and approved a settlement agreement by and among TK Holdings and the Commonwealth of Puerto Rico, by its Deputy Attorney General; and
 - (c) authorized and approved a settlement agreement by and among the Debtors, the Tort Claimants' Committee, the Future Claims Representative, and the MDL Plaintiffs.
32. As a result of these settlements, the Puerto Rico Claim has been withdrawn and the States will withdraw (or have already withdrawn) their appeal to the confirmation of the Chapter 11 Plan.

Plan Supplements

33. Since the date of the Third Report, Takata has filed the following supplements to the Chapter 11 Plan:
- (a) the Fourth Plan Supplement Pursuant to the Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors, dated March 26, 2018, which attached various documents including, among other things, the revised PSAN PI/WD Trust Agreement, the revised PSAN PI/WD Trust Distribution Procedures, the revised Participating OEM Contribution Agreement, and the PSAN PI/WD Trust Cooperation Agreement; and
 - (b) the Fifth Plan Supplement Pursuant to the Fifth Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and Its Affiliated Debtors, dated April 10, 2018, which included certain agreements, documents (or forms thereof), schedules, and exhibits in support of the Chapter 11 Plan.

Plan Effective Date

34. As described in a notice filed on April 11, 2018, the Effective Date of the Chapter 11 Plan occurred on April 10, 2018. The Chapter 11 Plan was substantially consummated as of that date, and all conditions precedent to the Effective Date of the Plan set out in section 9.2 of the Chapter 11 Plan were either satisfied or waived in accordance with the Chapter 11 Plan and the Confirmation Order.

RECOGNITION OF JAPANESE SALE APPROVAL

35. As previously noted, on March 14, 2018, the Canadian Court recognized the Plan Confirmation Order. The Canadian Court's recognition of the Plan Confirmation Order in Canada was an important element required for implementation of the Global Transaction, which approved of the transfer of non-PSAN Inflator assets in the United States, Mexico and South America.
36. The Japanese Foreign Representative now seeks recognition of the corresponding court approval in Japan that approved of the transfer of non-PSAN Inflator assets in Japan and other Asian countries.
37. The Japanese Sale Approval authorized the Japanese Debtors, pursuant to Article 42(1) of the Civil Rehabilitation Act, to proceed with the sale of their non-PSAN Inflator assets to KSS in accordance with the Japan APA. The transfer of such assets is an integral part of the Global Transaction, which is aimed at achieving a cross-border restructuring of the Debtors through a sale to the Plan Sponsor.
38. The Global Transaction was the best option to maximize the value of the Debtors' assets for the benefit of their creditors and will result (or has resulted) in satisfaction of the Debtors' obligations under the DOJ Restitution Order and facilitate continued recalls of airbags with PSAN Inflators.
39. The Information Officer understands that, for the Japanese Court to have approved the business transfer, the Japanese Court must have, among other things:

- (a) found the business transfer to be necessary for the rehabilitation of the Japanese Debtors; and
 - (b) been convinced that the process of selecting the purchaser was fair and that the purchase price and the terms and conditions of the sale were reasonable.
40. The Information Officer has been informed that, in an official hearing for creditors held at Tokyo District Court on February 7, 2018 with respect to approval of the Japan APA, no party raised any objection to the relief that was sought.
41. The Information Officer understands that KSS has requested that the Japanese Sale Approval be recognized in Canada and the United States.
42. Considering the importance to KSS of obtaining recognition of the Japanese Sale Approval, and in light of the highly integrated nature of the Global Transaction, the Information Officer believes that the Japanese Sale Approval should be recognized pursuant to Part IV of the *Companies' Creditors Arrangement Act* and as a matter of comity. Further, recognizing the Japanese Sale Approval is a form of cooperation between the Canadian Court and the Japanese Court in furtherance of the cross-border insolvency proceedings that were commenced to consummate the Global Transaction.

ACTIVITIES OF THE INFORMATION OFFICER

43. The Japanese Foreign Representative is seeking approval of the Fourth Report and the activities of the Information Officer set out therein.
44. The activities of the Information Officer since its Third 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;

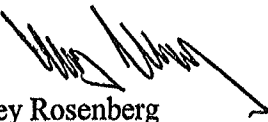
- (c) discussions with legal counsel and the Foreign Representatives' Canadian legal counsel regarding matters relevant to the recognition of the Japanese Sale Approval;
- (d) reviewing draft materials of the Japanese Foreign Representative in connection with recognition of the Japanese Sale Approval;
- (e) preparing this Fourth Report; and
- (f) responding to interested parties who contacted the Information Officer by way of the Information Officer's hotline or the Information Officer's website.

RECOMMENDATION

45. Based on the foregoing, the Information Officer respectfully recommends that this Court grant the relief requested by the Japanese Foreign Representative.

Dated this 8th day of May, 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

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

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