

CANADA

**SUPERIOR COURT**  
(Class Action)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N<sup>o</sup>: 500-06-000502-100

**ARGYRO MOURELATOS,** [REDACTED]  
[REDACTED]

*Petitioner*

-vs-

**GENERAL MOTORS OF CANADA LIMITED.,**  
[REDACTED]

-and-

**GENERAL MOTORS CORPORATION,** [REDACTED]  
[REDACTED]

*Respondents*

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**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE  
THE STATUS OF REPRESENTATIVE  
(Art. 1002 C.C.P. and following)**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER  
STATES THE FOLLOWING:**

## GENERAL PRESENTATION

### The Action:

1. Petitioner wishes to institute a class action on behalf of the following group, of which she is a member, namely:
  - All persons in Canada who own, lease or otherwise possess a vehicle sold and/or marketed by the Respondents in which an ETCS-i acceleration system is present, including, but not limited to, Pontiac Vibe vehicles, or any other group to be determined by the Court;

(hereinafter, both Quebec resident and non-Quebec resident Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", the "Member(s)", the "Consumer(s)");

### The Respondents:

2. The Respondent General Motors Corporation ("GM") is a corporation incorporated in the state of Delaware, United States of America. GM designs, manufactures, sells, and/or markets motor vehicles (hereinafter the "**Vehicles**") under, *inter alia*, the brand name "Pontiac" and the model name "Vibe". GM directs and controls the business actions of Respondent General Motors of Canada Limited ("**GM Canada**"). GM wholly owns GM Canada.
3. The Respondent GM Canada is a corporation incorporated under the laws of Canada. GM Canada carries on business throughout Canada. GM Canada participates in the design, manufacture, sales, and marketing of motor vehicles under, *inter alia*, the brand name "Pontiac" and the model name "Vibe". GM Canada sells motor vehicles through a network of dealerships located across Canada.

**General facts:**

4. Respondents were involved in the design, manufacture, distribution, marketing, and sale of motor vehicles, including, but not limited to, the Pontiac Vibe ("**Vibe**").
5. The Respondents' vehicles are dangerous and/or defective and/or unsafe in that the acceleration system in these vehicles may continue accelerating even once the driver has stopped pressing on the accelerator.
6. Runaway acceleration occurs when the throttle opens contrary to the driver's intentions. The vehicle continues out of control despite braking efforts by the driver. Unless the driver manages to disengage the engine quickly, the likelihood of an accident is high.
7. On or about February 9, 2010, Respondents issued a document called "2009-2010 Pontiac Vibe Safety Recall Information" (the "**Recall Update**"). This document is filed herewith as Exhibit P-1, as though recited at length herein.
8. The Recall Update explains that the Vibe is the "sister vehicle" of the Toyota Matrix. The Matrix, along with several other Toyota models, was recalled by Toyota on January 21, 2010. The recall was based on problems with runaway acceleration.
9. The accelerator pedal system in the Vibe and in the recalled Toyota Matrix is the same design. The accelerator system is called the ETCS-i. Vehicles equipped with the ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver. This increased propensity for runaway acceleration stems in part from the ETCS-i's vulnerability to electronic "confusion" in the ETCS-i sensors and electronic processors.
10. ETCS-i-equipped vehicles are sometimes referred to as "throttle-by-wire" or "drive-by-wire" because the ETCS-i has no mechanical linkage between the accelerator pedal and the throttle plate in the engine.
11. By designing, manufacturing, distributing, selling and/or marketing the Vibe

without incorporating an electronic or mechanical failsafe similar to those provided by competitors, Respondents have misled and harmed the Petitioner and thousands of unsuspecting consumers throughout Canada.

12. In the Recall Update, Respondents inform customers that Vibe vehicles are being recalled to permit the installation of a steel reinforcement bar into the accelerator pedal assembly. The installation of this corrective part will diminish the value of Vibe vehicles, even while it fails to correct the original design flaw.
13. Consumers purchasing a vehicle with an ETCS-i system, such as the Vibe, were not informed of the heightened propensity for runaway acceleration in ETCS-i equipped vehicles, and are not informed that the Respondents do not incorporate an adequate electronic or mechanical failsafe into its design.
14. The Respondents had actual knowledge that ETCS-i-equipped vehicles, including the Vibe, as currently designed and manufactured, are unreasonably dangerous for their intended use.
15. The Recall Update confirms that, since the recall on January 21, 2010, there have been approximately twenty customers who have complained of sticky accelerator pedals.
16. On January 27, 2010, the Respondents recalled the Vibe. This recall was based on problems with entrapment of floor mats on the driver's side, a problem which had previously been identified in a Toyota recall in October 2009. Respondents have not yet been able to properly address this floor mat issue. Instead, Respondents have merely instructed Class Members to stop using floor mats, with all of the negative consequences that this implies.
17. The Respondents are legally bound to design, manufacture, sell and/or market vehicles that are free of latent defects and fit for their intended uses. These latent defects cannot render the vehicle unfit for their purposes or so diminish the usefulness of the vehicle that the Petitioner would not have bought her Vibe, or would not have paid so high a price for it if she had been aware of the defect.

18. At all times relevant, Respondents used false and misleading representations or omissions of material fact in connection with the marketing, promotion, and sale of motor vehicles, including the Vibe. Respondents communicated the purported benefits of the their vehicles while failing to disclose that vehicles equipped with ETCS-i have a dangerous propensity to suddenly accelerate without driver input and against the intentions of the driver, with the intent that consumers, like the Petitioner, would purchase their motor vehicles.
19. Respondents therefore misled the Petitioner and caused her to purchase a Vibe.
20. As a result of the acts and omissions of the Respondents, all vehicles equipped with ETCS-i systems, such as the Vibe, have lost value on the resale market. Petitioner and all class members will suffer a pecuniary loss when they sell their vehicles on the secondary market, or trade the vehicles in to dealers.
21. Therefore, by reason of the above-mentioned actions and omissions by Respondents, the Petitioner and the Class Members have suffered damages which they wish to claim;

#### **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

22. The Petitioner leased a 2009 Pontiac Vibe from the "Parkway Plaza" dealership in Montreal at the end of July 2008. Her monthly lease payments are of approximately \$340.
23. The Petitioner first heard about problems with the acceleration of Vibe vehicles at the end of January 2010.
24. Petitioner contacted her dealer at that time and then again at the beginning of February 2010. Both times, the dealer told her that no recall had been announced and that she should merely keep driving the car and wait for a recall letter.

25. Petitioner has yet to receive a recall letter from the Respondents regarding this acceleration problem. All the while, her vehicle remains unsafe and dangerous.
26. Ever since she became aware of the acceleration problems with her car, Petitioner, who is pregnant, immediately stopped using her vehicle. She did not feel that her car was safe anymore for herself, her family members, her friends and especially her unborn child. Petitioner has been forced to ask people for rides to work and other destinations ever since that time.
27. Although she has not been using her car since the end of January 2010, Petitioner has continued to pay her monthly lease. She has also continued to pay the \$40 per month charge for parking at her workplace.
28. Petitioner also continued to pay the approximate \$70 per month in car insurance, in order to insure the car she can no longer use.
29. Petitioner has been forced to continue paying all of these monthly amounts notwithstanding the fact that she can no longer assume that said vehicle is safe and the fact that she has stop using said vehicle since the end of January 2010.
30. Petitioner therefore has suffered and continues to suffer damages due to the defects affecting her Pontiac Vibe.
31. Petitioner would not have leased the Vibe had she been made aware of this acceleration defect before signing the lease agreement.

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

32. Every Member of the Group owns, leases or otherwise possesses one of the motor vehicles described above.

33. Each Member of the Group is justified in claiming at least one or more of the following:
- a) Resiliation of the sale or lease of the Vehicle and reimbursement of the purchase price or lease amounts paid, including but not limited to taxes, license and registration fees, security deposit, down payment, etc., or subsidiarily, damages for the diminished value (or resale value) of the Vehicles;
  - b) Damages for the costs associated with the defects or repairs to the Vehicles;
  - c) Damages for loss of use and enjoyment of their Vehicles;
  - d) Damages for trouble, inconvenience and loss of time;
  - e) Damages for anxiety and fear;
  - f) Punitive and/or exemplary damages;
34. All of these damages to the Group Members are a direct result of the Respondents' conduct.

#### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

The composition of the group makes the application of Article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below:

35. The number of persons included in the Group is in thousands. According to the Recall Update, there are 28 484 Vibe models as part of the recalls by the Respondents.
36. The names and addresses of all persons included in the Group are not known to the Petitioner but are known to Respondents.
37. The Vehicles are sold by dealerships scattered across Canada and potential Group Members are therefore widely dispersed geographically across Canada.

38. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondents. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the Court system;
39. Moreover, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province) risks having contradictory judgments on questions of fact and law that are similar or related to all Members of the Group;
40. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
41. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Group to effectively pursue their respective rights and have access to justice;

The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:

42. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
43. The recourses of the Group Members raise identical, similar or related questions of fact or law, namely:
  - a) Are the Vehicles designed, manufactured, sold, and/or marketed by Respondents equipped with dangerous and/or defective gas pedal or acceleration systems?
  - b) Are the Vehicles in questions unsafe?



- c) Are the Vehicles fit for the purpose they were intended?
  - d) Did the Respondents know or should the Respondents have known about these defects affecting the Vehicles?
  - e) Did the Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or lease the Vehicles, or thereafter?
  - f) Have the Group Members suffered damages as a result of the defect in question?
  - g) Are Respondents liable to pay compensatory damages to Group Members stemming from the defect?
  - h) What are the categories of damages for which the Respondents are responsible to pay to Group Members, and if so in what amount?
  - i) Are Respondents liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?
44. The interests of justice favour that this motion be granted in accordance with its conclusions;

#### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

45. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages for product liability;
46. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** Plaintiff's action against Defendants;

**ORDER** the resiliation of the sale or lease of the Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Group Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Group Members equivalent to the amount of loss of resale value or diminished value of the Vehicle as a result of the existence and/or repair of the defect;

**CONDEMN** Defendants to reimburse to the Group Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Group Members for the loss of use and enjoyment of their Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

47. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a) The Petitioner and many Group Members are domiciled in the District of Montreal;
  - b) Respondents have business establishments in the District of Montreal;
  - c) Many of the Vehicles were purchased or leased by Class Members in District of the Montreal;
  - d) Class Counsel are domiciled in the District of Montreal;
48. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:
- a) leased a 2009 Pontiac Vibe which is affected by the defect alleged above, and is thus a Member of the Group;
  - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
  - c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
  - d) is ready and available to manage and direct the present action in the interest of the Group Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
  - e) does not have interests that are antagonistic to those of other members of the Group;

- f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
- g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

49. The present motion is well founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the Group herein described as:

- All persons in Canada who own, lease or otherwise possess a vehicle sold and/or marketed by the Respondents in which an ETCS-i acceleration system is present, including, but not limited to, Pontiac Vibe vehicles, or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Are the Vehicles designed, manufactured and sold by Respondents equipped with dangerous and/or defective gas pedal or acceleration systems?
- b) Are the Vehicles in questions unsafe?
- c) Are the Vehicles fit for the purpose they were intended?

- d) Did the Respondents know or should the Respondents have known about these defects affecting the Vehicles?
- e) Did the Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or lease the Vehicles, or thereafter?
- f) Have the Group Members suffered damages as a result of the defect in question?
- g) Are Respondents liable to pay compensatory damages to Group Members stemming from the defect?
- h) What are the categories of damages for which the Respondents are responsible to pay to Group Members, and if so in what amount?
- i) Are Respondents liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** Plaintiff's action against Defendants;

**ORDER** the rescission of the sale or lease of the Vehicles purchased or leased by the Group Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Group Members, and any other amounts paid by Group Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Group Members equivalent to the amount of loss of resale value or diminished value of the Vehicle as a result of the existence and/or repair

of the defect;

**CONDEMN** Defendants to reimburse to the Group Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Group Members for the loss of use and enjoyment of their Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses

**DECLARE** that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

**ORDER** the publication of a notice to the Members of the Group in accordance with Article 1006 C.C.P.;

**THE WHOLE** with costs to follow.

**MONTREAL, March 1, 2010**

(S) Merchant Law Group LLP

**Copie conforme / True Copy**

**(s) / (sgd.) Merchant Law Group, LLP**  
**Merchant Law Group, LLP**

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**MERCHANT LAW GROUP LLP**

Attorneys for Petitioner and the Class  
Members