

CANADA

**CLASS ACTION**  
SUPERIOR COURT

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PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No:500-06-000455-085

**CAROLINE LABRECQUE**,   


Petitioner

VS

**GENERAL MOTORS OF CANADA LIMITED.**, a legal person, with a head office at 1908 Colonel Sam Drive, Oshawa, Ontario, L1H-8P7

and

**GENERAL MOTORS CORPORATION**, a legal person, with a head office at 300 Renaissance Center, Detroit, Michigan, United States of America, 48265-3000

Respondents

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION  
AND TO OBTAIN THE STATUS OF REPRESENTATIVE  
(A. 1002 C.C.P.)**

IN SUPPORT OF HER MOTION FOR PERMISSION TO INSTITUTE A CLASS ACTION AND OBTAIN THE STATUS OF A REPRESENTATIVE, PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:

1. Petitioner wishes to institute a class action on behalf of all the persons forming part of the Group hereinafter described and of which Petitioner is a member:

*All physical persons in Canada, and all legal persons in Canada who, during the twelve (12) month period preceding this Motion for Authorization to Institute a Class Action and to Obtain the Status of Representative, had not more than fifty (50) employees under their direction or control, who own or lease or have owned or leased one of the models of motor vehicle listed below, which are manufactured, sold, or leased by the Respondents:*

- a) Saturn Vue, model years 2002-2005;*
- b) Saturn Ion, model years 2003-2004;*

**2. Petitioner's personal claim against the Respondents is based on the following facts:**

**RESPONDENTS**

- 2.1 The Respondent General Motors Corporation ("GM") is a corporation incorporated in the state of Delaware, USA. GM designs, tests, manufactures, markets, sells and/or leases motor vehicles under, *inter alia*, the brand name Saturn. GM directs and controls the business actions of General Motors of Canada ("GM Canada"). GM wholly owns GM Canada.
  - 2.2 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, testing, manufacture and marketing, and/or sales of motor vehicles under, *inter alia*, the brand name Saturn. GM Canada sells and leases Saturn motor vehicles through a network of dealerships located across Canada.
  - 2.3 In this Motion for Authorization, "Respondents" refers to General Motors and General Motors of Canada, either individually or together.
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## PETITIONER'S CLAIM

- 2.4 Petitioner purchased a Saturn Vue motor vehicle, model year 2004, (the "vehicle") on March 23, 2007, from authorized dealer Saturn Terrebonne, located in Lachenaie, Québec, as shown in the sales receipt attached exhibit P-1 to this Motion. The vehicle was a used vehicle with 61 000 kilometres on the odometer. Petitioner continues to own the vehicle.
- 2.5 In early January 2008, the vehicle started leaking oil from the transmission because of a defective seal. Saturn Terrebonne repaired the leak under warranty on January 8, 2008, as seen in the "Bon de Réparation" 76859 filed as Exhibit P-2 to this Motion.
- 2.6 On March 28, 2008, there was another oil leak from the transmission. Saturn Terrebonne repaired the damage under warranty. It removed the transmission, resealed the leak, and replaced the manifold gasket, as seen in the "Bon de Réparation" 78277 filed as Exhibit P-3 to this Motion
- 2.7 On October 28, 2008, Petitioner started hearing a vibrating noise coming from the engine each time she put the vehicle in motion. Petitioner contacted Saturn Terrebonne and made an appointment for an examination for November 6, 2008. The following morning, October 29<sup>th</sup>, the noise from the transmission was more intense. Petitioner decided to bring her vehicle directly to Saturn Terrebonne. A mechanic at Saturn Terrebonne went on a test drive with Petitioner and confirmed that the problem was caused by the transmission.
- 2.8 On October 29, 2008, the vehicle odometer read approximately 103 000 kilometres. The distance warranty for the transmission had expired at 100 000 kilometres. The five year time warranty had expired one week earlier, on October 23, 2008. When the mechanic discovered that the warranty had expired, he explained that he would have to contact his head office to check whether the repair would be covered by warranty.
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- 2.9 On the evening of October 29, 2008, Petitioner received a telephone call from Phillippe Mayer, Director of Parts and After-sale Service for Saturn Terrebonne. Mr. Mayer offered that Saturn would pay half of the \$7000 cost of replacing or repairing, meaning that Petitioner would have to pay \$3500.
- 2.10 Petitioner was not satisfied with this offer from Saturn Terrebonne. She asked her husband Danick to contact Mr. Mayer and express her dissatisfaction with Saturn. Mr. Mayer advised Petitioner to contact the Saturn head office if she was not satisfied. Danick contacted Saturn head office and discussed the case with a customer service agent named Diana. Diana contacted Petitioner on November 10, 2008, to offer that Saturn would pay for the replacement of the transmission. The Petitioner would have to pay for alignment and oil change in an amount of \$406.30. Feeling there was no other option, Petitioner accepted this arrangement and made an appointment for November 25, 2008, at Saturn Terrebonne. Phillippe Mayer confirmed that the replacement transmission would be a new transmission.
- 2.11 On November 12, 2008, the transmission failed completely. Petitioner had the vehicle towed from her house to Saturn Terrebonne, and informed Phillippe Mayer that she expected Saturn Terrebonne to pay the towing costs. Mr. Mayer agreed that Saturn would pay for the towing. "Bon de Réparation" 83182 for the replacement of the transmission is filed as exhibit P-4 to this Motion. This document clearly indicates that the transmission is not new, but is in fact "rebuilt".
- 2.12 After the transmission was replaced, Petitioner took the vehicle to a professional vehicle sales company to establish the trade-in value of the vehicle. This sales organization offered an amount of \$7000.
- 2.13 During the time she has owned the vehicle, Petitioner has maintained her vehicle in a reasonable and prudent fashion. She has had the oil changed at intervals of approximately
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5 000 kilometres.

## LEGAL RESPONSIBILITY OF RESPONDENTS

- 2.14 The VTi transmission used in Saturn vehicles referred to in the Group description is a type of transmission known as a continuously variable transmission (“CVT”). Unlike conventional automatic transmissions, which use traditional gears to shift at a few fixed points, CVTs shift through the use of a steel belt that runs through pulleys that move closer together or farther apart. This belt is called a thrust belt. When the transmission is operating, there is not enough power to drive the thrust belt, causing the thrust belt to slip. This slipping causes friction between the thrust belt and the pulleys, causing the thrust belt to wear out prematurely.
- 2.15 As early as 1999, Respondents had concerns about the durability of the VTi transmissions. In testing prior to the launch of the Saturn Vue in 2002, testing indicated premature failure of VTi transmissions. Once the Saturn vehicles mentioned in the Group description entered the market, an unusually high number of warranty claims began being made against the Respondents because of failure of the VTi transmission. There were also a large number of reports of VTi transmission failures from consumer groups, authorized Saturn dealers, general vehicle repair facilities, and specialized internet websites.
- 2.16 Respondents, as manufacturers and sellers of the vehicle, are bound by a legal warranty of quality to Petitioner, as set out in Article 1726 of the Quebec Civil Code. Respondents warranted that Petitioner’s vehicle was free of latent defects which would render the vehicle unfit for the purpose for which it was intended or so diminish the usefulness of the vehicle that Petitioner would not have bought or paid so high a price for it if she had been aware of the defect.
- 2.17 Per Article 1729 of the Quebec Civil Code, a defect is presumed to have existed when

there is premature deterioration compared to goods of the same type. In Petitioner's case, the ongoing oil leak problems with the transmission and the ultimate complete breakdown of the transmission indicates that the transmission was deteriorating prematurely compared to transmissions in other brands or models of motor vehicles.

2.18 Respondents were aware, or could not have been unaware, that the VTi transmissions of Saturn vehicles as described in the Group description contained latent defects and systematic reliability problems. As such, per Article 1728 of the Quebec Civil Code, Respondents are bound to restore the price paid by Petitioner and to pay all damages suffered by Petitioner. These damages include the actual costs paid by Petitioner, damages for inconvenience and loss of use of the vehicle suffered by Petitioner, and loss of re-sale value of the vehicle as a result of the existence of the latent defect.

2.19 Respondents are liable to pay punitive damages, as set out in Article 1621 of the Quebec Civil Code. Respondents were aware of the defects in the VTi transmissions, yet they did not issue a recall, publicize the defects, or take any other corrective action.

3. **The facts giving rise to personal claims by each of the Group Members against Respondents are:**

3.1 The claims of each Group Member are founded on the same facts general facts as the Petitioner's claim.

3.2 Each Group Member has facts particular to his or her claim as concerns issues such as: brand and year of the motor vehicle, mode and date of acquisition, mode and date of sale, manifestation of the defect, mode of repair, cost of repair, and damages suffered.

4. **The composition of the Group makes the application of articles 59 or 67 of the Code of Civil Procedure difficult or impractical because:**

- 4.1 The Group Members are so numerous that joinder of all Members is impracticable. While the exact number of Group Members is unknown to Petitioner at the present time, she estimates the potential number of Group Members will be in the thousands. Saturn vehicles are sold at dealerships throughout Canada. The potential Group Members are widely dispersed geographically across Canada.
- 4.2 The number of potential Group Members can be partially ascertained from records kept by the Respondents.
5. **The identical, similar, or related questions of law or fact between each Group Member and Respondents which Petitioner wishes to have decided by the class action are:**
- 5.1 Do the VTi transmissions used in the vehicles described in the Group description perform adequately?
- 5.2 Does the performance of the VTi transmissions constitute a latent defect in the vehicle?
- 5.3 Have the Respondents breached their legal warranties to the Petitioner and Group Members under the Québec Civil Code or other legislation?
- 5.4 Have the Petitioner and Group Members suffered prejudice as a result of the latent defect?
- 5.5 Are the Respondents responsible civilly to compensate for the prejudice suffered by the Petitioner and Group Members?
- 5.6 What is the extent and what are the categories of damages for which the Respondents are responsible to the Petitioner and Group Members?
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**6. The question of law or fact which is specific to each Group Member is:**

6.1 The quantum of prejudice suffered by each Group Member and the amount of damages owed to each Group Member.

**7. It is expedient that the bringing of a class action for the benefit of Group Members be authorized as:**

7.1 The majority of the issues to be dealt with are issues common to every Group Member.

7.2 The relatively small claim of individual Group Members may discourage them from pursuing this matter in any other forum.

7.3 The high number of potential legal claims could lead to a multitude of individual legal actions in different jurisdictions, possibly leading to contradictory judgements on questions of law and fact.

**8. The nature of the recourse which Petitioner wishes to exercise on behalf of the Group Members is:**

8.1 An action in civil responsibility and reimbursement based on the existence of a latent defect in the Respondents' motor vehicles, as described in the Group description, which were sold or leased in Canada; specifically, the fact that the VTi transmission system does not perform adequately and renders the motor vehicles unfit for the purpose for which they were intended.

**9. The conclusions sought by your Petitioner are:**



**GRANT** the Petitioner’s action against the Respondents;

**AUTHORIZE** the Petitioner to proceed with this action as a class action;

**CONDEMN** the Respondents to pay each of the Group Members for the costs expended and to be expended by Group Members to repair the prejudice suffered by them, as well as interest on this amounts at the legal rate;

**CONDEMN** the Respondents to pay each of the Group Members an amount to be fixed by the Court for the inconvenience, loss of the use of their motor vehicles, as well as interest on this amount at the legal rate;

**CONDEMN** the Respondents to pay each of the Group Members an amount for the loss of re-sale value of their motor vehicles as a result of the existence of the latent defect;

**CONDEMN** the Respondents to pay exemplary damages;

**CONDEMN** the Respondents to any further relief as the Court finds appropriate;

**THE WHOLE** with costs, including the costs of all exhibits, expert reports and testimony, and publication of notices.

10. **Petitioner requests that she be ascribed the status of Representative for the following reasons:**

10.1 She is a Group Member. She is well informed of the facts initiating this action. She has the required time, determination, and energy to bring this matter to a conclusion. She collaborates fully with her attorneys, responds diligently and intelligently to requests they

make and comprehends the nature of the class actions. She is not in a conflict of interest with other Group Members.

**11. Petitioner proposes that the class action be brought before the Superior Court of the District of Montreal for the following reasons:**

11.1 The Respondents have business establishments in the District of Montreal.

11.2 The Petitioner resides in Terrebonne, Québec, close to the District of Montréal.

11.3 The Petitioner's legal counsel practice in Montréal, Québec

**WHEREFORE PETITIONER PRAYS**

**THAT** the present Motion be granted;

**THAT** the bringing of a class action be authorized as follows:

An action in civil responsibility and reimbursement based on the existence of a latent defect in the Respondents' motor vehicles, as described in the Group description, which were sold or leased in Canada; specifically, the fact that the VTi transmission system does not perform adequately and renders the motor vehicles unfit for the purpose for which they were intended.

**THAT** the status of Representative be granted to the Petitioner for bringing the class action for the benefit of the following Group, namely:

*All physical persons in Canada, and all legal persons in Canada who, during the twelve (12) month period preceding this Motion for Authorization to Institute a Class Action and to Obtain the Status of Representative, had not more than fifty (50) employees under their direction or*

*control , who own or lease or have owned or leased one of the models of motor vehicle listed below, which are manufactured, sold, or leased by the Respondents:*

- a) Saturn Vue, model years 2002-2005;*
- b) Saturn Ion, model years 2003-2004*

**THAT** the principal questions of law and fact to be dealt with collectively be identified as follows:

- 1) Do the VTi transmissions used in the vehicles described in the Group description perform adequately?
- 2) Does the performance of the VTi transmissions constitute a latent defect in the vehicle?
- 3) Have the Respondents breached their legal warranties to the Petitioner and Group Members under the Québec Civil Code or other legislation?
- 4) Have the Petitioner and Group Members suffered prejudice as a result of the latent defect?
- 5) Are the Respondents responsible civilly to compensate for the prejudice suffered by the Petitioner and Group Members?
- 6) What is the extent and what are the categories of damages for which the Respondents are responsible to the Petitioner and Group Members?

**THAT** the conclusions sought be identified as follows:

**GRANT** the Petitioner's action against the Respondents;

**AUTHORIZE** the Petitioner to proceed with this action as a class action;

**CONDEMN** the Respondents to pay each of the Group Members for the costs expended and to be expended by Group Members to repair the prejudice suffered by them, as well as interest on this amounts at the legal rate;

**CONDEMN** the Respondents to pay each of the Group Members an amount to be fixed by the Court for the inconvenience, loss of the use of their motor vehicles, as well as interest on this amount at the legal rate;

**CONDEMN** the Respondents to pay each of the Group Members an amount for the loss of re-sale value of their motor vehicles as a result of the existence of the latent defect;

**CONDEMN** the Respondents to pay exemplary damages;

**CONDEMN** the Respondents to any further relief as the Court finds appropriate;

**THE WHOLE** with costs, including the costs of all exhibits, expert reports and testimony, and publication of notices.

**THAT** it be declared that any Group Member who has not requested his exclusion from the Group be bound by any judgment to be rendered on the class action;

**THAT** the delay for exclusion be fixed at ninety (90) days from Notice to Members and that at the expiry of such delay, Group Members who have not requested exclusion be bound by any such judgment;

**THAT** it be ordered that a Notice to Members be published in the following manner and in the

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form annexed to these presents:

A copy of the Notice to Members be sent within a set time period by the Respondents to all Group Members at the last known address of the Group Member;

Publication once in each of the following daily newspapers:

La Presse, Le Journal de Montreal, Le Journal de Quebec, The Gazette, Globe & Mail;

Publication of the Notice to the Members on Respondents' websites with a hypertext link from Respondents' web main page

Publication on the website of Petitioner's legal counsel.

**THAT** Respondents be ordered to assume the publication costs of the Notice to the Members

**THAT** the Court file be referred to the Chief Justice of the Quebec Superior Court so that he may fix the district in which the class action is to be brought and the judge before whom it will be heard.

The whole with costs to follow suit.

Date of Issuance: December 9, 2008

*Merchant Law Group LLP*

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**Merchant Law Group LLP**  
Attorneys for Petitioner

## NOTICE OF PRESENTATION

Take notice that the Petitioner has filed this *Motion for Authorization to Institute a Class Action and to Obtain the Status of Representative* at the office of the Québec Superior Court in the Judicial District of Montréal.

This Motion will be presented before one of the Honourable Judges of the Superior Court, sitting in and for the Judicial District of Montréal, on Thursday, February 5, 2009, at the Palais de Justice, 1 Notre-Dame Est, Montréal, Québec, H2Y-1B6, in Room 2.16, at 9:00 A.M., or as soon as counsel can be heard.

Please govern yourself accordingly,

December 9 , 2008

*Merchant Law Group LLP*

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Attorney for the Petitioner  
Merchant Law Group LLP

<p>No. 500-06-000455-085 SUPERIOR COURT (CLASS ACTION) PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL</p>	<p><b>CAROLINE LABRECQUE</b>  vs  <b>GENERAL MOTORS OF CANADA LIMITED</b>  and  <b>GENERAL MOTORS CORPORATION</b></p>	<p><b>MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE</b></p>	<p>BC3841  Me. Owen Falquero Merchant Law Group LLP 83 St-Paul Ouest Montréal, Québec, H2Y-1Z1 Tel : (514) 842-7776 Fax : (514) 842-8055</p>	
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