

CANADA

SUPERIOR COURT  
(Class Action)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

MICHAEL GAGNON, [REDACTED]

Nº :

[REDACTED];

*Petitioner*

-vs-

**GENERAL MOTORS OF CANADA**, a legal person, having its principal place of business at 1908 Colonel Sam Dr., Oshawa, Ontario, L1H 8P7;

-and-

**GENERAL MOTORS COMPANY**, a legal person, having its principal place of business at 300 Renaissance Center, Detroit, Michigan, United States of America, 48265;

*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**

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- All persons in Quebec (including but not limited to individuals, corporations, and estates) who, on March 31, 2014, owned one of the following vehicles:
  - 2004-2006, 2008, 2009 Chevrolet Malibu
  - 2004-2006 Chevrolet Malibu Maxx
  - 2009-2010 Chevrolet HHR
  - 2010 Chevrolet Cobalt
  - 2008-2009 Saturn Aura
  - 2004-2007 Saturn ION
  - 2005, 2006, 2008, 2009 Pontiac G6

(“Class Vehicles”)

(hereinafter, referred to as “Class Member(s)”, “Group Member(s)”, the “Group”, the “Class”, the “Member(s)”;

#### The Respondents

2. Respondent, General Motors Company (“GM”) is a corporation incorporated in the state of Delaware, USA. GM directs and controls the business actions of General Motors of Canada (“GM Canada”);
3. GM acquired all of the assets, staff, and knowledge of the predecessor General Motors Corporation, which went into bankruptcy in 2009;
4. Respondent, General Motors of Canada Limited, wholly owned by GM, is a corporation incorporated under the laws of Canada and carries on business throughout Canada;

5. GM and GM Canada (“Respondents”) shared the common purpose of designing, testing, manufacturing, marketing, sales, and distribution of the class vehicles in Canada;
6. The business and interests of the Respondents are inextricably interwoven, therefore, both Respondents are solidarily liable for the acts and omissions of the other;

General Facts:

7. At all material times, Respondents tested, manufactured, marketed, sold, distributed the following vehicles:
  - 2004-2006, 2008, 2009 Chevrolet Malibu
  - 2004-2006 Chevrolet Malibu Maxx
  - 2009-2010 Chevrolet HHR
  - 2010 Chevrolet Cobalt
  - 2008-2009 Saturn Aura
  - 2004-2007 Saturn ION
  - 2005, 2006, 2008, 2009 Pontiac G6
8. On March 31, 2014, Class vehicles were recalled because the electric power steering (“EPS”) may experience a sudden loss of power steering assist, the whole as more fully appears in a copy of the recall from Transport Canada’s Road Safety Recalls Database, communicated herewith as exhibit P-1;
9. Certain Class Vehicles may experience a sudden loss of electric-power steering assist due to a defect in the power steering motor, the steering column, the power steering motor control unit or a combination of the steering column and the power steering motor control unit, depending on the vehicle;

10. Without electric power steering assist, the vehicle's steering will still work, but it will be difficult for the driver to turn the steering wheel, let alone maintain full control of their vehicle. Driving without power steering can be dangerous because the vehicle may not be able to turn as quickly or as easily in order to perform an evasive manoeuver and avoid a collision;
11. Petitioner and Group Members, having been accustomed to driving their vehicles with electric power steering assist, face significant danger when suddenly the electric power steering assist functions on their vehicles is changed;
12. The defective EPS renders the Class vehicles dangerous to operate, and subjects owners, passengers, and third parties, to an increased risk of personal injury and death;

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

13. Petitioner, Michael Gagnon, is a resident of Windsor, Quebec;
14. In 2005, Petitioner purchased a new 2005 Saturn Ion;
15. Petitioner's vehicle is one of the vehicles subjected to the safety recall due to a defect in the EPS, the whole as more fully appears in a copy of a recall letter from GM Canada, communicated herewith as exhibit P-2;
16. Petitioner has experienced psychological and emotional distress knowing that the vehicle is unsafe;
17. Petitioner therefore has suffered and continues to suffer damages due to the defect affecting his 2005 Saturn Ion;
18. Had Petitioner known about this serious danger and defect, he would not have purchased his vehicle;
19. In addition, due to the defect in the electric power-steering, Petitioner's vehicle's resale value has diminished;

20. The damages suffered by Petitioner are a direct and proximate result of the Respondents' conduct;
21. As a consequence of the foregoing, Petitioner is justified in claiming damages;

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

22. Every Member of the Group owns or owned at the time of its recall one of the motor vehicles comprised in the Class Vehicles;
23. Each Member of the Group is justified in claiming damages for:
  - a) Decline in the value of the recalled vehicle;
  - b) The inconvenience associated with having to expend the time to have his/her vehicle repaired and be without their motor vehicles;
  - c) Mental distress associated with owning a vehicle subject to recall, with a dangerous defect in the EPS; and
  - d) Out of pocket expenses for, among other things, alternative transportation and prior repairs to the defective EPS;
  - e) Punitive and/or exemplary damages;
24. All of these damages to the Group Members are a direct and proximate 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:**

25. The number of persons included in the Group is estimated to be in the thousands. According to the recall issued on March 31, 2014, approximately 157,423 vehicles in Canada are part of the recall by the Respondents;
26. The names and addresses of all persons included in the Group are not known to Petitioner but are known to Respondents;
27. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the 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;
28. 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;
29. 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:**

30. The recourses of the Group Members raise identical, similar or related questions of fact or law, namely:
  - a) Is the EPS of Class Vehicles defective?
  - b) Is there a safety defect in the Class Vehicles?
  - c) Are the Class Vehicles fit for the purpose they were intended?

- d) Did the Respondents know or should the Respondents have known about these defects affecting the Class Vehicles?
  - e) Did Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased the Class 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 Respondents are responsible to pay to Group Members, and 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?
31. The interests of justice favour that this motion be granted in accordance with its conclusions;

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

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

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

**CONDEMN** Defendants to pay damages to the Group Members equivalent to the amount of loss of value of the Class Vehicle;

**CONDEMN** Defendants to reimburse to the Group Members any out of pocket expenses 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 the Class 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;

34. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Many Group Members are domiciled in the District of Montreal;
  - b) Respondents have a business establishment in the District of Montreal;
  - c) Many of the Class Vehicles were purchased by Class Members in the District of the Montreal;
  - d) Petitioner's counsel is domiciled in the District of Montreal;
35. 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) owns a 2005 Saturn Ion 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 the 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;

36. 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 Quebec (including but not limited to individuals, corporations, and estates) who, on March 31, 2014, owned one of the following vehicles:
  - 2004-2006, 2008, 2009 Chevrolet Malibu
  - 2004-2006 Chevrolet Malibu Maxx
  - 2009-2010 Chevrolet HHR
  - 2010 Chevrolet Cobalt
  - 2008-2009 Saturn Aura
  - 2004-2007 Saturn ION
  - 2005, 2006, 2008, 2009 Pontiac G6

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

- a) Is the EPS assist system of Class Vehicles defective?
- b) Is there a safety defect in the Class Vehicles?
- c) Are the Class Vehicles fit for the purpose they were intended?
- d) Did the Respondents know or should the Respondents have known about these defects affecting the Class Vehicles?
- e) Did Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased the Class 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 Respondents are responsible to pay to Group Members, and 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;

**CONDEMN** Defendants to pay damages to the Group Members equivalent to the amount of loss of value of the Class Vehicle;

**CONDEMN** Defendants to reimburse to the Group Members any out of pocket expenses 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 the Class 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;

**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, January 23, 2015**

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**MERCHANT LAW GROUP LLP**

Attorneys for the Petitioner

**NOTICE OF PRESENTATION**

TO: **GENERAL MOTORS OF CANADA**  
1908 Colonel Sam Drive,  
Oshawa, Ontario, L1H 8P7;

and

**GENERAL MOTORS COMPANY**  
300 Renaissance Center,  
Detroit, Michigan, United States of America  
48265;

**TAKE NOTICE** that the Petitioner has filed this MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE THE STATUS OF REPRESENTATIVE in the office of the Superior Court of the Judicial District of Montréal.

The Motion will be presented before one of the Honourable Judges of the Superior Court of Québec, District of Montréal, on **March 2, 2015** at **9:00 AM**, in room **2.16** of the Courthouse of Montréal situated at 1 Notre Dame East, Montréal, Québec. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case.

**MONTREAL, January 23, 2015**

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**MERCHANT LAW GROUP LLP**  
Attorneys for the Petitioner