

S-062846  
No. \_\_\_\_\_  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

DONALD GOODRIDGE

PLAINTIFF

AND:

GENERAL MOTORS OF CANADA LIMITED and  
GENERAL MOTORS CORPORATION

DEFENDANTS

**WRIT OF SUMMONS**

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

(Name and address of each plaintiff)

Donald Goodridge  
c/o Branch MacMaster  
Barristers and Solicitors  
1210 - 777 Hornby Street  
Vancouver, BC V6Z 1S4

(Name and address of each defendant)

General Motors of Canada Limited  
c/o Vincent Orchard  
1200 Waterfront Centre  
200 Burrard Street  
P.O. Box 48600  
Vancouver, BC V7X 1T2

General Motors Corporation  
300 Renaissance Center  
Detroit, Michigan

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen. Head of the Commonwealth, defender of the Faith.

*To the defendants:*

TAKE NOTICE that this action has been commenced against you by the plaintiff for the claim(s) set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this writ and
- (b) if a statement of claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU if:

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

#### ***TIME FOR APPEARANCE***

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ is served on a person outside of British Columbia, the time for appearance by that person, after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

#### ***TIME FOR DEFENCE***

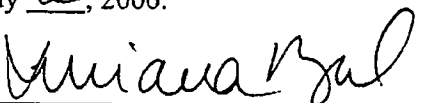
A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of


- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

(1) The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1
(2) The plaintiff's ADDRESS FOR DELIVERY IS:  Fax number for delivery (if any):	BRANCH MACMASTER 1210-777 Hornby Street Vancouver, B.C. V6Z 1S4 Fax: (604) 684-3429
(3) The names and office addresses of the plaintiff's solicitors are:	W. Branch and L. Brasil BRANCH MACMASTER 1210-777 Hornby Street Vancouver, B.C. V6Z 1S4 Tel: (604) 654-2999  and  Colin P. Stevenson Stevenson's LLP 400 – 144 Front Street Toronto, ON M5J 2L7 Tel: (416) 599-7900

The plaintiff's claim is set out in the attached Statement of Claim.

Dated at Vancouver, British Columbia on May 2, 2006.

  
Ward Branch, Branch MacMaster  
Counsel for the Plaintiff

  
Colin P. Stevenson, Stevenson's LLP  
Counsel for the Plaintiff

**ENDORSEMENT ON ORIGINATING PROCESS  
FOR SERVICE EX JURIS**

The Plaintiff claims the right to serve this Writ of Summons and the attached Statement of Claim on the Defendant General Motors Corporation outside British Columbia on the grounds that:

- (h) the proceeding is founded on a tort committed in British Columbia,
  - (j) a party outside British Columbia is a necessary or proper party to a proceeding properly brought against some other person duly served in British Columbia, and
  - (o) the claim arises out of goods or merchandise sold or delivered in British Columbia.
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BETWEEN:

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PLAINTIFF

AND:

GENERAL MOTORS OF CANADA LIMITED  
and GENERAL MOTORS CORPORATION

DEFENDANTS

**STATEMENT OF CLAIM**

**Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50**

**The Parties:**

1. The plaintiff, Donald Goodridge, resides at 5255 Rockwood Place, in the City of Chilliwack, in the Province of British Columbia.
  
2. The plaintiff brings this action on his own behalf and on behalf of the following class of persons resident in British Columbia (collectively, the "Class") who:
  - a. currently own or lease Class Vehicles (as defined below); or
  - b. have owned or leased Class Vehicles, and paid or were charged for the cost of replacing an IMG and/or related services attempting to detect and identify failures associated with the Design Deficiencies.

3. The defendant, General Motors Corporation (“GM USA”) is a corporation duly incorporated in the state of Delaware pursuant to the laws of the United States of America, with an office in Detroit, Michigan. GM USA designs, tests, manufactures and directs the manufacture of the motor vehicles described below.

4. GM USA controls and directs the business of its Canadian subsidiary or affiliate, General Motors of Canada Limited (“GM Canada”) in the design, manufacture, marketing, sales, servicing and export of General Motors (“GM”) motor vehicles.

5. The defendant, GM Canada, is a federally incorporated company which is registered as an extra provincial company and carries on business in the Province of British Columbia and throughout Canada. GM Canada’s attorney in British Columbia is Vincent R. Orchard, with an office at 1200 Waterfront Centre, 200 Burrard Street, in Vancouver. GM Canada is wholly owned and controlled by GM USA.

**The Design Deficiencies:**

6. GM USA designed, marketed, tested and/or manufactured in the 1995 through 2003 model-years certain Buick, Chevrolet, Oldsmobile and Pontiac motor vehicles with a 3.1, 3.4, 3.8 or 4.3 litre engine using a specific intake manifold gasket (“IMG”). These vehicles include those listed in Schedule “A” (collectively, the “Class Vehicles”). The Class Vehicles were supplied by GM USA to GM Canada and sold or leased in Canada through Canadian GM dealerships.

7. Further, or in the alternative, GM Canada designed, marketed, tested and/or manufactured the Class Vehicles, and the Class Vehicles were sold or leased in Canada through Canadian GM dealerships.

8. The plaintiff owns a Class Vehicle, and more particularly, a 2002 Chevrolet Venture (the "Plaintiff's Vehicle") which he purchased on April 10, 2003 from Brett Chevrolet Cadillac in Chilliwack, British Columbia.

9. The Class Vehicles were designed and manufactured by the defendants such that the IMG degrades prematurely causing coolant to leak into the engine. In particular, the material used to manufacture the IMG did not prevent corrosion from the coolant in the coolant system and the IMG did not properly seal the gasket to the engine causing leaks to occur (collectively, the "Design Deficiencies"). Among other consequences of the Design Deficiencies, the coolant mixes with engine oil making the oil ineffective and damaging the engine. The engines acquire a propensity to overheat and seize completely, creating a danger to the operator and occupants, and require engine replacement.

10. As a result of the Design Deficiencies, the IMG in the Plaintiff's Vehicle was not properly sealed, thereby allowing leaks to occur.

11. The Design Deficiencies were corrected when the defendants introduced a new gasket in 2004.

**Duties of Care Owed by the Defendants to the Plaintiff and the Class:**

12. The plaintiff pleads that the defendants owed to the plaintiff and the Class the following duties of care:

- a. to ensure that the IMG was designed, marketed, tested, and/or manufactured safely, properly and in a good and workmanlike manner so that it would not degrade prematurely;
- b. to warn the plaintiff and the Class of the the Design Deficiencies once it became aware (or through reasonable due diligence could have become aware) of its existence;

- c. to remedy the the Design Deficiencies upon discovering them through the recall and repair of the Class vehicles.

**Negligence of the Defendants:**

13. The defendants breached their duty of care to the plaintiff and to the Class by negligently designing, marketing, testing and manufacturing the Class Vehicles. Particulars of the Defendants' negligence include the following:

- a. the IMG was designed in a manner which, under normal conditions, usage and applications causes it to degrade and fail, which in turn causes the engine to overheat and fail;
  - b. the IMG was manufactured in a manner which, under normal conditions, usage and applications would overheat and fail;
  - c. the IMG was not properly or adequately tested to avoid the Design Deficiencies;
  - d. the Class Vehicles were marketed in such a manner as not to reveal the Design Deficiencies and its consequences;
  - e. the Class Vehicles failed to perform at their optimal level because of premature degradation and the defendants' failure to rectify the Design Deficiencies;
  - f. the Design Deficiencies were not altered to avoid premature degradation;
  - g. the IMG design was not changed promptly once the defendants knew the IMG was subject to premature degradation;
  - h. inadequate testing was carried out to ensure a proper design and to ensure proper and prompt modifications to the IMG to eliminate the foreseeable risks;
  - i. the defendants consciously accepted the risk of the Design Deficiencies;
  - j. the defendants failed to attach a warning or warning label to the IMG or the owners' manuals alerting users and mechanics to the risk of the premature failure;
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- k. the defendants failed to develop any appropriate method for testing the IMG before they were manufactured, assembled, distributed and sold;
  - l. the defendants failed to establish any adequate procedures to educate their distributors, sales and service representatives or the ultimate users;
  - m. the defendants failed to establish any adequate procedure to ensure that possible design defects in the IMG were discovered and users' complaints were transmitted from them to the customers, sales representatives or distributors;
  - n. the defendants failed to establish any or any adequate procedure for evaluating customers' complaints with respect to the IMG;
  - o. the defendants failed to recall and repair or to ensure the repair of Class Vehicles that Class members gave to the defendants or the defendants' agents for servicing;
  - p. the defendants failed to accurately, candidly, promptly and truthfully disclose the defective nature of the IMG;
  - q. the defendants failed to identify, implement and verify that procedures were in place to address design problems, complaint handling or timely notification of IMG failures or complaints;
  - r. the defendants failed to implement adequate performance specifications for the IMG;
  - s. the defendants failed to conduct in-process and finished device testing to ensure performance specifications for the IMG were met;
  - t. the defendants failed to adequately define or control written manufacturing specifications, processes, procedures and controls for the IMG;
  - u. the defendants failed to conform with good manufacturing and distribution practices;
  - v. the defendants failed to introduce proper quality assurance programs to identify, recommend or provide adequate solutions for the Design Deficiencies;
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- w. the defendants failed to change their design, manufacturing and assembly process with respect to the IMG in a reasonable and timely manner;
- x. the defendants hired incompetent personnel and appointed incompetent officers and directors;
- y. the defendants failed to properly supervise their employees, their subsidiaries and associated and affiliated corporations;
- z. the defendants failed to advise the plaintiff and the Class that the IMG was defective and needed to be replaced;
- aa. the defendants knew or ought to have known of the abnormal wear and tear and risk of damage to vehicles if the IMG was not replaced;
- bb. the defendants failed to conduct adequate testing and research regarding the risk of using the IMG;
- cc. the defendants failed to engage in adequate pre-market and production testing of the vehicles in respect of the IMG;
- dd. the defendants continued to fail to fulfill their ongoing obligation to fully disclose the results of their testing and research regarding the damage to GM vehicles arising from the IMG; and
- ee. the defendants used and recommended the use of coolants which were too abrasive having regard to the design and manufacture of the IMG.

14. By virtue of the acts and omissions described above, the defendants were negligent and caused damage to the plaintiff and the Class.

15. The plaintiff pleads that by virtue of the acts and omissions described above, the defendants are liable in damages to him and to the Class members and that each defendant is responsible for the acts and omissions of the other defendants for the following reasons:

- a. each was the agent of the other;
- b. each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;
- c. each company entered into a common advertising and business plan to distribute and sell GM motor vehicles containing the IMG;
- d. each defendant owed a duty of care to the other and to each Class member by virtue of the common business plan to manufacture, distribute, market, test and sell GM motor vehicles with the Design Deficiencies;
- e. the defendants intended that their businesses be run as one global business organization.

**Failure to Disclose and Recall:**

16. The defendants have known about the Design Deficiencies for years but have failed to take any adequate remedial steps. In 2001, in an internal service bulletin, the defendants wrote:

“Some owners may comment on excessive engine coolant consumption, or an engine coolant leak near or under the throttle body area of the upper intake manifold.”

and:

“Upper intake manifold composite material may degrade . . . and could result in an internal or external coolant leak.”

17. Following the manufacture of the Class Vehicles, the defendants were aware that the Class vehicles were experiencing engine failure during operation due to the Design Deficiencies and that such engine failures were occurring with unreasonable frequency and were resulting in considerable expense to owners and lessees of said motor vehicles.

18. From 1995 through to the present, the defendants concealed the nature and scope of the Design Deficiencies from the Class and regulatory bodies in the United States and Canada.

Particulars of this concealment include the fact that where any information was provided to such authorities or to the public generally, such information was incomplete or misleading in that it sought to attribute any problems to issues other than the Design Deficiencies.

19. The defendants had a duty to recall the Class Vehicles and rectify the Design Deficiencies. As pleaded above, the defendants became aware following the manufacture of the Class Vehicles of the existence of the Design Deficiencies and its dangers and in breach of said duty failed to recall the Class Vehicles to correct the Design Deficiencies.

**Competition Act:**

20. As used below "Representation" means the defendants' failure to state any or all of the following material facts:

- a. the IMG was not free of defects;
- b. the IMG was not fit for the purpose intended;
- c. the IMG was designed in a manner which under normal conditions, usage and applications would cause it to degrade prematurely; or
- d. the IMG was manufactured in a manner which under normal conditions, usage and applications would cause it to degrade prematurely.

21. The plaintiff and each other Class member relied on the Representation.

22. The reliance upon the Representation by the plaintiff and every other Class member is established by his/her purchase and/or use of the Class Vehicle. Had the plaintiff and each Class member known that the Representation was false and misleading he/she would not have purchased and/or used the Class Vehicle.

23. The defendants made the Representation to the public and in so doing breached s. 52 of the *Competition Act*, R.S. 1985, c. C-34, as amended from time to time (the "Competition Act"), because the Representation:

- a. was made for the purpose of promoting the business interests of the defendants;
- b. was made to the public;
- c. was false and misleading in a material respect; and
- d. stated a level of performance of the IMG that was not based on adequate and proper testing.

24. The plaintiff and every other Class member relied upon the Representation by buying or using the Class vehicles and suffered damages and loss.

25. Pursuant to s. 36 of the *Competition Act* the defendants are liable to pay the damages to the Class member which resulted from the breach of s. 52 particularized in paragraph 22.

26. Pursuant to s. 36 of the *Competition Act* the plaintiff and the other Class members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

27. The plaintiff and other Class members are also entitled to recover, as damages or costs, in accordance with the *Competition Act* the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class member.

28. The plaintiff and the other Class members are consumers within the meaning of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the "BPCPA").

29. The purchases and/or leases of Class Vehicles by the plaintiff and the other Class members are consumer transactions within the meaning of the BPCPA.

30. The defendants are suppliers to the consumer transactions within the meaning of the BPCPA.

31. The defendants have engaged in deceptive practices within the meaning of s. 3 of the BPCPA as follows:

- a. failing to disclose the material facts comprising the Representation described above;
- b. actively concealing the Design Deficiencies;
- c. representing that the Class Vehicles are of high quality when they knew the Design Deficiencies seriously diminished the quality of the vehicles.

(Collectively, the "Deceptive Acts or Practices".)

32. The plaintiff and the other Class members have suffered damages or losses as a result of the defendants' Deceptive Acts or Practices, particulars of which are set out above.

**Damages:**

**1. Waiver of Tort**

33. The plaintiff and the other Class members plead the doctrine of the waiver of tort and, due to the negligence and failure to warn of the defendants, are entitled to a restitutionary award of the benefits which accrued to the defendants as a result of their negligence and/or failure to warn.

34. The benefits which accrued to the defendants as a result of their negligence and/or failure to warn include:

- a. the saving of costs of recalling the Class Vehicles;
- b. the saving of costs of replacing the IMG in the Class Vehicles with a new IMG;
- c. the saving of costs of redesigning the IMG in the Class Vehicles to overcome the Design Deficiencies; and
- d. revenues from the sale of replacement IMGs or the components thereof.

35. The benefits which accrued to the defendants as a result of their negligence and/or failure to warn were unjust in the circumstances and there is no juristic reason for them.

## 2. Compensatory Damages

36. Further, and/or in the alternative, as a result of the breach of the failure to warn, negligence, breach of statutory duties and failure to disclose and recall as pleaded above, the plaintiff and the other members of the Class have suffered loss and damage and have incurred damages, the particulars of which include:

- a. repair expenses in attempts to identify and/or rectify the Design Deficiencies;
- b. resultant damage to persons or property other than the IMG or the Class vehicles;
- c. overpayment for Class vehicles, which contained a latent hazardous defect;
- d. diminution in the value of the Class Vehicles of the members of the Class and,
- e. future costs of repair of the Design Deficiencies;
- f. damages for having been put at an unreasonable risk of injury;
- g. consequential expenses, including the cost of repairs to the emission system and the cost of remedying failed emission control tests.

### 3. Punitive, Exemplary and Aggravated Damages:

37. The conduct of the defendants in deliberately concealing the Design Deficiencies and deliberately exposing the Class members to considerable expense and inconvenience is highhanded and demonstrates an indifference to the consumers of their products such that it offends the moral standards of the community and warrants the condemnation of the court.

#### Legislation:

38. In addition to the *Competition Act* and the *BPCPA*, the plaintiff pleads and relies upon the *Class Proceedings Act, R.S.B.C. 1996, c. 50* and the *Negligence Act., R.S.B.C. 1996, c. 333*, as amended from time to time.


39. WHEREFORE the plaintiff claims, on his own behalf and on behalf of the Class members:

- a. disgorgement of the benefits which accrued to the defendants as a result of their negligence and/or failure to warn;
- b. further or alternatively:
  - i. damages equivalent to the sums they have paid out of their pockets in attempts to identify and repair the Design Deficiencies or other related failures;
  - ii. damages equivalent to the costs of rectifying the Design Deficiencies or other related failures;
  - iii. damages equivalent to the resultant damage to property other than the IMG or Class Vehicles;
  - iv. damages for diminution in the value of their vehicles;
  - v. damages pursuant to s.36 of the *Competition Act*;
  - vi. damages pursuant to ss. 171 of the *Business Practices and Consumer Protection Act*;
- c. interest pursuant to the *Court Order Interest Act* (British Columbia).;

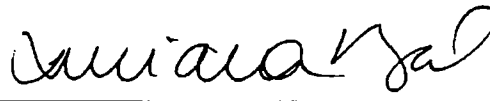
- d. exemplary, punitive and aggravated damages; and
- e. such further relief as this Honourable Court may deem just.

Place of trial: Vancouver, British Columbia

Dated: May 2, 2006

  
Ward Branch, Branch MacMaster  
Counsel for the Plaintiff

Dated: May 2, 2006

  
Colin P. Stevenson, Stevensons LLP  
Counsel for the Plaintiff

**SCHEDULE "A"**

- a. 1995-1997 Buick Riviera
- b. 1995-1998/2000-2003 Buick LeSabre
- c. 1995-1998/2000-2003 Buick Park Avenue
- d. 1996-1998/2000-2003 Buick Regal
- e. 2000-2003 Buick Century
- f. 2002-2002 Buick Rendezvous
- g. 1996/1998-2001 Chevrolet Lumina
- h. 1998-2003 Chevrolet Monte Carlo
- i. 1997-2003 Chevrolet Venture
- j. 1999-2003 Chevrolet Malibu
- k. 2000-2003 Chevrolet Impala
- l. 1995-1998 Oldsmobile Ninety Eight
- m. 1995-1998 Oldsmobile Eighty Eight
- n. 1998 Oldsmobile Intrigue
- o. 1996-2003 Oldsmobile Silhouette
- p. 1999 Oldsmobile Cutlass
- q. 1999-2003 Oldsmobile Alero
- r. 1995-1998/2000-2003 Pontiac Bonneville
- s. 1997-1998/2000-2003 Pontiac Grand Prix
- t. 1996-1999 Pontiac Trans Sport
- u. 1999-2003 Pontiac Grand Am
- v. 1999-2003 Pontiac Montana
- w. 2001-2003 Pontiac Aztec
- x. 1995-1997 Buick Riviera
- y. 1995-2004 Buick Park Avenue
- z. 1996-2004 Buick Regal
- aa. 1997-2004 Buick LeSabre
- bb. 1998-1999 Chevrolet Lumina
- cc. 1998-2004 Chevrolet Monte Carlo
- dd. 2000-2004 Chevrolet Impala
- ee. 1995-1996 Oldsmobile Ninety-Eight
- ff. 1995-1999 Oldsmobile Eighty-Eight
- gg. 1998-1999 Oldsmobile Intrigue
- hh. 1995-2004 Pontiac Bonneville
- ii. 1997-2003 Pontiac Grand Prix with 3.8L V6 Engine

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