

**THE QUEEN'S BENCH  
Winnipeg Centre**

**(Proceeding under *The Class Proceedings Act*)**

BETWEEN:

**NIGEL TURL,**

Plaintiff,

-and-

**GENERAL MOTORS OF CANADA LIMITED  
and GENERAL MOTORS CORPORATION,**

Defendants.

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**STATEMENT OF CLAIM**

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TO THE DEFENDANTS:

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or a Manitoba lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or where the plaintiff do not have a lawyer, serve it on the plaintiff, and file it in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

DATE: May 25, 2006

Issued By: \_\_\_\_\_

D. S. B. B. B.  
DEPUTY REGISTERAR  
COURT OF THE QUEEN'S BENCH  
WINNIPEG, MANITOBA

DEPUTY REGISTRAR  
100C - 408 York Avenue  
Winnipeg, MB R3C 0P9

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

AND TO: GENERAL MOTORS CORPORATION  
300 Renaissance Centre  
Detroit, MI, USA 48265-3000

**CLAIM**

1. The representative plaintiff, NIGEL TURL ["the plaintiff"] resides in the City of Winnipeg, in the Province of Manitoba. The plaintiff claims, on his own behalf and on behalf of the Class members (as described below) against the defendants:

- a. an order certifying this proceeding as a class proceeding and appointing the plaintiff as representative plaintiff for the Class and any appropriate subclass thereof, as described below;
- b. general damages, in an amount to be determined by this Honourable Court;
- c. special damages, in an amount to be determined by this Honourable Court;
- d. a declaration that the benefits which accrued to the defendants as a result of their negligence and failure to warn unjustly enriched the defendants;
- e. an accounting of the benefits which accrued to the defendants as a result of their negligence and/or failure to warn;
- f. a declaration that the defendants hold in trust for the Class members (as described below) the benefits which accrued to the defendants as a result of their negligence and/or failure to warn, in an amount to be proven at the trial of this action;

- g. disgorgement of the benefits which accrued to the defendants as a result of their negligence and/or failure to warn;
- h. alternatively:
  - i. damages equivalent to the sums the plaintiff and Class members have paid out of their pockets in attempts to identify and repair the Design Deficiencies or other related failures, as described below;
  - ii. damages equivalent to the costs of rectifying the Design Deficiencies or other related failures, as described below;
  - iii. damages equivalent to the resultant damage to property other than the intake manifold gasket (IMG) as described below, or Class Vehicles (described below);
  - iv. damages for diminution in the value of the Class vehicles;
  - v. damages pursuant to section 36 of the Competition Act of Canada, and the regulations thereunder;
  - vi. a declaration that the unfair business practices as defined herein contravened The Business Practices Act, C.C.S.M. c. B120, and the regulations thereunder;
  - vii. damages pursuant to section 23 of The Business Practices Act, C.C.S.M. c B120, and the regulations made thereunder;
  - i. exemplary, punitive and aggravated damages, in an amount to be determined by this Honourable Court;
  - j. prejudgment and post-judgment interest pursuant to Part XIV of The Court of Queen's Bench Act, C.C.S.M. Cap. C280, and the amendments, rules and regulations thereto;

- k. the cost of providing appropriate notice to the Class (as described below) and administering this proposed class proceeding for their benefit in accordance with the provisions of The Class Proceedings Act;
- l. costs of this action on a solicitor and client basis together with any applicable Goods and Services Tax payable pursuant to the Excise Tax Act, R.S.C. 1990. C. E-15; and
- m. such further relief as this Honourable Court may deem just.

### **THE CLASS**

2. The plaintiff brings this action on his own behalf and on behalf of the following class of persons resident anywhere in Canada except British Columbia or Quebec [“the “Class”] who:

- a. currently own or lease vehicles with an IMG;
- b. have owned or leased vehicles with an IMG and paid or were charged for the cost of repairing and/or replacing an IMG, and/or rectifying any failure related to the IMG and/or Design Deficiencies, or performing services attempting to detect and identify failures associated with the Design Deficiencies, as described below.

### **THE DEFENDANTS**

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. 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, the defendant, 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, General Motors of Canada Limited, is a federally-incorporated company which is registered as an extra-provincial company and carries on business in the Province of Manitoba and throughout Canada. GM Canada's address for service of legal process is 1908 Colonel Sam Drive, Oshawa, Ontario, L1H 8P7. 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 2004 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" ["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, which were sold or leased in Canada through Canadian GM dealerships.

8. The Class Vehicles were designed and manufactured by the defendants such that the IMG degrades prematurely causing coolant to leak. 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. The engines consequently require entire replacement.

9. The Design Deficiencies were corrected when the defendants introduced a new intake manifold gasket in 2003 or 2004. This was an implicit admission by the defendants of their negligence, particulars of which are described below.

#### **THE PLAINTIFF**

10. On or about June 24, 1998, the plaintiff purchased a brand new 1998 Pontiac Transport vehicle, with a 3.4 litre engine [“the Vehicle”]. The Vehicle was purchased in the City of Ottawa, in the Province of Ontario.

11. On or about May 17, 2004, the plaintiff took the Vehicle to Super Tune & Brake Auto Centre in Winnipeg, Manitoba, for routine maintenance to be performed to the Vehicle pursuant to the Vehicle owner’s manual. The plaintiff says that a technician at Super Tune & Brake Auto Centre performed an engine coolant flush on the Vehicle and noted the leaking of engine coolant in the vicinity of the upper intake manifold. Upon further inspection, it was noted that the intake manifold gasket was defective. The intake manifold gasket was removed and replaced by Super Tune & Brake Auto Centre, for which parts and labour, the plaintiff paid to Super Tune & Brake

Auto Centre on May 17, 2004, the sum of \$749.99, inclusive of taxes. These expenses were not covered under the Vehicle's warranty.

**DUTIES OF CARE OWED BY THE DEFENDANTS TO THE PLAINTIFF AND THE CLASS (AS DEFINED BELOW)**

12. The plaintiff pleads that the defendants owed to the plaintiff and the Class the following duties of care to avoid the acts and omissions described in paragraph 13 and more generally:

- 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 Design Deficiencies once it became aware (or through reasonable due diligence could have become aware) of its existence;
- c. to remedy the Design Deficiencies upon discovering them through the recall and repair of the Class Vehicles.

**NEGLIGENCE OF THE DEFENDANTS**

13. The defendants breached their duties of care to the plaintiff and to the Class by negligently designing, marketing, testing and manufacturing the Class Vehicles, particulars of which include:

- 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 cause the IMG to 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 their 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;
- k. the defendants failed to develop any appropriate method for testing the IMG before it was 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 defect;
- 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;
- 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 failed 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 engine 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 defendant was the agent of the other;
- b. each defendant's business was operated so that it was inextricably interwoven with the business of the other defendant as set out above;
- c. each defendant 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 defendant and to the plaintiff 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 2003, in an internal service bulletin, the defendants wrote:

"Some owners may comment on an apparent oil or coolant leak. Additionally, the comments may range from spots on the driveway to having to add fluids."

"[The IMG] may be leaking allowing coolant, oil or both to leak from the engine...."

17. Following the manufacture of the Class Vehicles, the defendants were aware that the Class Vehicles were experiencing engine failure during operation caused by or materially contributed to by the Design Deficiencies and that such engine failures were occurring with unreasonable frequency and were resulting in considerable expense to owners and lessees of the Class Vehicles.

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

#### **STATUTORY REMEDIES**

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 of Canada 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 of Canada the defendants are liable to pay to the plaintiff and the other Class members the damages which resulted from the breach of s. 52.

26. Pursuant to s. 36 of the Competition Act of Canada 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 damages suffered by the plaintiff and members of the Class as a result of the breach of the Competition Act are those damages claimed in paragraph 1 above.

#### **UNFAIR BUSINESS PRACTICES**

29. The Class members are consumers as defined in section 1 of The Business Practices Act, C.C.S.M. c. B120 ["the BPA"].

30. The Class members' purchases and/or leases of Class Vehicles are consumer transactions within the meaning of the BPA.

31. The defendants are suppliers to the consumer transactions within the meaning of the BPA.

32. The defendants have engaged in unfair business practices within the meaning of s. 2 of the BPA as follows:

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

[Collectively "Unfair Business Practices".]

33. The plaintiff says that the Representation deceived or tended to deceive the plaintiff and the Class, and that the Representation constituted Unfair Business Practices which induced the plaintiff and the Class to purchase the Class Vehicles and for which the plaintiff and Class members have suffered damages as a result of the defendants' Unfair Business Practices, particulars of which are set out above, pursuant to the BPA, and are those damages claimed in paragraph 1 above.

#### **WAIVER OF TORT AND UNJUST ENRICHMENT**

34. The plaintiff and the Class 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.

35. 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.

36. 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.

#### **COMPENSATORY DAMAGES**

37. Further and/or the alternative, as a result of the breach of the failure to warn, negligence, breach of statutory duties and failure to disclose and recall and the tort of spoliation as pleaded above, the plaintiff and the other Class members 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 the Class Vehicles, which contained a latent hazardous defect;
- d. diminution in the value of the Class Vehicles of the members of the Class;
- e. future costs of repair of the Design Deficiencies;
- f. damages for having been put at unreasonable risk of injury;

