

Court File No: MCO39906

IN THE COURT OF QUEEN'S BENCH OF NEW
BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

BETWEEN:

PAMELA STEEVES

Plaintiff,

-and-

**GENERAL MOTORS OF CANADA
LIMITED**, an extra provincial corporation,
and **GENERAL MOTORS
CORPORATION**, a body corporate,

Defendants.

NOTICE OF ACTION WITH STATEMENT OF
CLAIM ATTACHED
(FORM 16A)

TO: **General Motors of Canada Limited**
c/o Clark Drummie
George B. Cooper
777 Main Street, Suite 400
Moncton, NB E1C 1E9

General Motors Corporation
300 Renaissance Center
Detroit, MI

LEGAL PROCEEDINGS HAVE BEEN
COMMENCED AGAINST YOU BY FILING THIS
NOTICE OF ACTION WITH STATEMENT OF
CLAIM ATTACHED.

If you wish to defend these proceedings, either you or
a New Brunswick lawyer acting on your behalf must
prepare your Statement of Defence in the form
prescribed by the Rules of Court and serve it on the
plaintiff or the Plaintiff's lawyer at the address shown
below and, with proof of such service, file it in this
Court Office, together with the filing fee of \$50,

a) If you are served in New Brunswick, WITHIN
20 DAYS after service on you of this Notice of
Action with Statement of Claim Attached, or

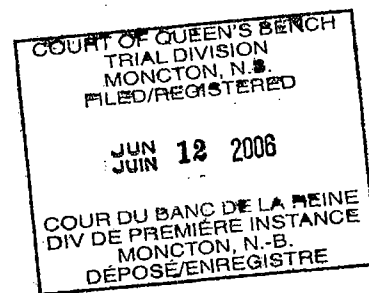
COUR DU BANC DE LA REINE DU NOUVEAU-
BRUNSWICK

DIVISION DE

CIRCONSCRIPTION JUDICIAIRE DE MONCTON

ENTRE :

-et-



AVIS DE POURSUITE ACCOMPAGNÉ D'UN
EXPOSÉ DE LA DEMANDE
(FORMULE 16A)

DESTINATAIRE :

PAR LE DÉPÔT DU PRÉSENT AVIS DE
POURSUIVE ACCOMPAGNÉ D'UN EXPOSÉ DE
LA DEMANDE, UNE POURSUIVE JUDICIAIRE
A ÉTÉ ENGAGÉE CONTRE VOUS.

Si vous désirez présenter une défense dans cette
instance, vous-même ou un avocat du Nouveau-
Brunswick chargé de vous représenter devrez rédiger
un exposé de votre défense en la forme prescrite par
les Règles de procédure, le signifier au demandeur ou
à son avocat à l'adresse indiquée ci-dessous et le
déposer au greffe de cette Cour avec un droit de
dépôt de \$50 une preuve de sa signification :

a) DANS LES 20 JOURS de la signification qui
vous sera faite du présent avis de poursuite
accompagné d'un exposé de la demande, si elle
vous est faite au Nouveau-Brunswick, ou

- b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or
- c) If you are served anywhere else, WITHIN 60 DAYS after such service.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

You are advised that:

- a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;
- b) the plaintiff intends to proceed in the English language; and
- c) your Statement of Defence must indicate the language in which you intend to proceed.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Anne Richard, Clerk of the Court at Moncton, on the 12 day of June, 2006

Court
Seal

L.S. copy
 S.L. copie Anne M. Richard
 Legal Officer/Conseillère juridique
 (Clerk)

Clerk of the Court of Queen's Bench
 PO Box 5001
 Moncton, NB E1C 8R3

- b) DANS LES 40 JOURS de la signification si elle vous est faite dans une autre région du Canada ou dans les Etats-Unis d'Amérique, ou
- c) DANS LES 60 JOURS de la signification si elle vous est faite ailleurs.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis

Sachez que :

- a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues ;
- b) le demandeur a l'intention d'utiliser la langue ANGLAISE ; et
- c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par _____, greffier de la Cour à _____, ce 2006.

Sceau de
La Cour

(greffier)

STATEMENT OF CLAIM**The Parties:**

1. The Plaintiff, **Pamela Steeves**, resides in the City of Saint John, in the County of Saint John and Province of New Brunswick.
2. The Plaintiff brings this action pursuant to Rule 14.01 of the Rules of Court as a class action on her own behalf and on behalf of a class of people in New Brunswick (hereinafter the "Class") who currently own or lease vehicles with an IMG (defined below) or have owned or leased vehicles with IMG and paid or were charged for the cost of repairing and/or replacing an IMG, or rectifying any failure related to the IMG defect, or performing services to attempt to detect or identify the IMG defect or any failures related to the IMG defect.
3. The Plaintiff, **Pamela Steeves**, as the Representative Plaintiff, does not have any interest adverse to any of the members of the proposed class.
4. The Defendant, General Motors Corporation (hereinafter "**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.
5. **GM USA** controls and directs the business of its Canadian subsidiary or affiliate, General Motors of Canada Limited (hereinafter "**GM Canada**") in the design,

manufacture, marketing, sales, servicing and export of General Motors (hereinafter "GM") motor vehicles.

6. The Defendant, **GM Canada**, is a federally incorporated company which is registered as an extra provincial corporation and carries on business in the Province of New Brunswick and throughout Canada. **GM Canada** is wholly owned and controlled by **GM USA**.

The IMG Defect:

7. **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 engines using a specific intake manifold gasket ("IMG"). These vehicles include those listed in Schedule "A" (hereinafter the "Class Vehicles"). The Class Vehicles were supplied by **GM USA** to **GM Canada** and sold or leased in Canada through Canadian GM dealerships.

8. 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.

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. Among other consequences, the coolant mixes with engine oil making the oil ineffective and damaging the engine. In some cases the engines overheat and seize completely, creating a danger to the operator and occupants, and require complete engine replacements. This is described herein as the "IMG defect".

10. The IMG defect was corrected when the Defendants introduced a new gasket in 2004. This was an implicit admission by the Defendants of their negligence described below.

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

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

Negligence of the Defendants:

12. 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 IMG defect;
- (d) the Class Vehicles were marketed in such a manner as not to reveal the IMG defect 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 IMG defect;
- (f) the IMG defect 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 IMG defect;
- (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 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 IMG defect;
- (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.

13. By virtue of the acts and omissions described above, the Defendants were negligent and caused damage to the Plaintiff and the Class.

14. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to her 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 IMG defect; and
- (e) the Defendants intended that their businesses be run as one global business organization.

Failure to Disclose and Recall:

15. The Defendants have known about the IMG defect 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.”

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

17. From 1995 through to the present, the Defendants concealed the nature and scope of the IMG defect 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 IMG defect.

18. The Defendants had a duty to recall the Class Vehicles and rectify the IMG defect. As pleaded above, the Defendants became aware following the manufacture of the Class Vehicles of the existence of the IMG defect and its dangers and in breach of said duty failed to recall the Class Vehicles to correct the IMG defect.

Statutory Remedies:

19. 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.

20. The Plaintiff states that the Representation deceived or tended to deceive the Plaintiff and the Class and that the Representation constituted an unfair practice which induced the plaintiff and the Class to purchase the Class Vehicles as a result of which they are entitled to damages.

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 section 52 of the *Competition Act*, R.S. 1985, c. C-34, as amended from time to time, 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 section 36 of the *Competition Act* the Defendants are liable to pay the damages to the Class member which resulted from the breach of section 52.

26. Pursuant to section 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 Class Vehicles are consumer products within the meaning of the *Consumer Product Warranty and Liability Act*, c.-18.1, R.S.N.B. 1973, and the Plaintiff and Class members are buyers of consumer products within the meaning of the *Act*.

29. The Defendants are suppliers of consumer products within the meaning of the *Consumer Product Warranty and Liability Act*.

30. As a result of the IMG defect, the Class Vehicles were not fit for the purpose(s) for which vehicles are normally used and the Defendants therefore breached the implied warranty in section 10 of the *Consumer Product Warranty and Liability Act*.

31. The Class Vehicles were not durable for a reasonable period of time as they contained an IMG defect as described in paragraph 9. The Defendants therefore breached the implied warranty in section 12 (1) of the *Consumer Product Warranty and Liability Act*.

32. The Defendants are liable for the damages sustained by the Plaintiff and Class members pursuant to the sections 23 and 27 (1) of the *Consumer Product Warranty and Liability Act*.

33. The Defendants, on becoming aware of the IMG defect negligently failed to cause notice of the defect to be given in the prescribed manner to the Plaintiff and each Class member who obtained a Class Vehicle, in breach of section 10 of the *Motor Vehicle Safety Act*, S.C. 1993, c. 16.

34. The damages suffered by the Plaintiff and members of the Class are as a result of the unfair practices of the Defendants and the breaches of the *Competition Act*, *Consumer*

Product Warranty and Liability Act, and the *Motor Vehicle Safety Act*. The Plaintiff and Class members are therefore entitled to the relief claimed in paragraph 46.

Waiver of Tort and Unjust Enrichment:

35. 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.

36. 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 IMG defect; and
- (d) revenues from the sale of replacement IMGs or the components thereof.

37. 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.

Damages:

38. 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 IMG defect;
- (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 IMG defect;
- (f) damages for having been put at an unreasonable risk of injury; and
- (g) consequential expenses, including the cost of repairs to the emission system and the cost of remedying failed emission control tests.

Punitive, Exemplary and Aggravated Damages:

39. The conduct of the Defendants in deliberately concealing the IMG defect 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.

40. The Plaintiff claims punitive, aggravated and exemplary damages for the reckless, malicious, and unlawful conduct of the Defendants.

Representative Plaintiff:

41. The Plaintiff, **Pamela Steeves**, owns a Class Vehicle, and more particularly, is the owner of a 2000 Chevrolet Impala, which she purchased in August of 1999 in which the IMG has been subject to the IMG defect. The Plaintiff has suffered damages as a result of the IMG defect. The damages include out-of-pocket expenses, repair and replacement costs and diminution of vehicle value.

42. The Plaintiff pleads and relies upon Rule 14.01 of the Rules of Court in support of this action as a Class Action, and says there are numerous persons in New Brunswick having the same interest in this cause, i.e. who currently own or lease vehicles with an IMG or have owned or leased vehicles with IMG and paid or were charged for the cost of repairing and /or replacing an IMG, or rectifying any failure related to the IMG defect, or performing services to attempt to detect or identify the IMG defect or any failures related to the IMG defect. The Plaintiff therefore brings this action in her own right and on behalf of or for the benefit of all persons so interested, as a Class Action.

43. The Plaintiff pleads and relies upon Rule 11 of the Rules of Court in support of this action as a representative action.

44. The Plaintiff pleads and relies upon Rule 19.01 (h) and (i) of the Rules of Court in support of the service upon the Defendants **GM USA** and **GM Canada** outside New Brunswick, without leave, and state that this action is in respect of a tort committed in New Brunswick and in respect of damage sustained in New Brunswick arising from a tort in breach of contract wherever committed.

45. In addition to the *Competition Act*, the *Consumer Product Warranty and Liability Act*, and the *Motor Vehicle Safety Act*, the Plaintiff pleads and relies upon the *Contributory Negligence Act*, R.S.N.B. 1973, c. C-19, as amended from time to time.

Relief Claimed:

46. The Plaintiff therefore claims on her own behalf, and on behalf of the proposed Class:

- (a) a declaration and/or certification that this action is a Class Action pursuant to Rule 14 of the Rules of Court, and that all persons in the defined Class will be deemed to have opted in unless they expressly opt out;
- (b) that the Court provide further directions as to the conduct of the action;

- (c) an order certifying this proceeding as a Class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class and any appropriate subclass thereof;
- (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 the benefits which accrued to the Defendants as a result of their negligence and/or failure to warn;
- (g) disgorgement of the benefits which accrued to the Defendants as a result of their negligence and/or failure to warn;
- (h) further or alternatively:
- (i) damages equivalent to the sums they have paid out of their pockets in attempts to identify and repair the IMG defect or other related failures;
 - (ii) damages equivalent to the costs of rectifying the IMG defect 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*;

- (j) prejudgment and post judgment interest at such a rate and for such period as this honourable Court may allow;
- (k) exemplary, punitive and aggravated damages;
- (l) interests;
- (m) costs of this action, including HST;
- (n) costs of providing appropriate notice to Class members and administering this proposed Class Action for their benefit; and
- (o) such further and other relief as this Honourable Court may deem just.

DATED at Moncton, New Brunswick, this 12th day of June, 2006.



Howard A. Spalding, and
Talia C. Profit
of BARRY SPALDING
Solicitors for the Plaintiff and Class

BARRY SPALDING
1077 St. George Blvd., Suite 100
P.O. Box 1066
Moncton, NB
E1C 8P2

SCHEDULE "A"

- A. 1995-1997 Buick Riviera
 - B. 1995-1998/2000-2003 Buick LeSabre
 - C. 2000-2003 Buick Century
 - D. 2002-2003 Buick Rendezvous
 - E. 1996/1998-2001 Chevrolet Lumina
 - F. 1997-2003 Chevrolet Venture
 - G. 1999-2003 Chevrolet Malibu
 - H. 1995-1998 Oldsmobile Ninety-Eight
 - I. 1996-2003 Oldsmobile Silhouette
 - J. 1999 Oldsmobile Cutlass
 - K. 1999-2003 Oldsmobile Alero
 - L. 1995-1998/2000-2003 Pontiac Bonneville
 - M. 1997-1998/2000-2003 Pontiac Grand Prix
 - N. 1996-1999 Pontiac Transport
 - O. 1999-2003 Pontiac Grand Am
 - P. 1999-2003 Pontiac Montana
 - Q. 2001-2003 Pontiac Aztec
 - R. 1995-2004 Buick Park Avenue
 - S. 1996-2004 Buick Regal
 - T. 1997-2004 Buick LeSabre
 - U. 1998-2004 Chevrolet Monte Carlo
 - V. 2000-2004 Chevrolet Impala
 - W. 1995-1999 Oldsmobile Eighty-Eight
 - X. 1998-1999 Oldsmobile Intrigue
 - Y. 1995-2004 Pontiac Bonneville
- 1997-2003 Pontiac Grand Prix with 3.8L V6 Engine