

# CANADIAN NATIONWIDE CLASS ACTION SETTLEMENT AGREEMENT

## PREAMBLE AND RECITALS

WHEREAS seventeen (17) proposed class actions have been commenced in Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Quebec, and Saskatchewan (specifically defined in paragraph 1 herein as the "Actions") alleging, *inter alia*, that the nylon intake manifold gaskets installed in certain General Motors vehicles were defective.

AND WHEREAS the capitalized defined terms used in this preamble and recitals section shall have the meaning ascribed to such terms in paragraph 1 of this Agreement.

AND WHEREAS GM denies all allegations of wrongdoing asserted in the Actions and denies liability under any cause of action asserted therein. Specifically, among other things, GM denies the alleged defects, including the alleged defects in the lower intake manifold gaskets.

AND WHEREAS GM further contends that it has always attempted to put its customers first and has made all reasonable efforts to satisfy any concerns presented by customers relating to its product lines.

AND WHEREAS the Parties recognize that the outcome of the Actions is uncertain and that pursuing the Actions to litigated judgments would entail substantial cost, risk, and delay.

AND WHEREAS the Representative Plaintiffs and their counsel have conducted an investigation and evaluation of the factual and legal issues raised by the claims asserted in the Actions and believe that, in light of the cost, risk, and delay of continued litigation balanced against the benefits of the settlement set forth in this Agreement, that such settlement is in the best interests of, and is fair, reasonable, and adequate for the Class as a whole.

AND WHEREAS, through this Settlement, the Parties desire to compromise and settle all issues and claims that have been, or could have been, brought in any of the Actions by or on behalf of Class Members arising out of the issues pleaded, and that GM should be fully and finally released from any liability with respect to those issues and claims as set out herein.

AND WHEREAS, save and except for the Actions filed in the Province of Quebec, certification of a national class shall be sought in the Ontario Superior Court of Justice based on the substantial connections of Ontario with the facts giving rise to the Actions.

AND WHEREAS the Parties agree to undertake all reasonable efforts, including all steps and efforts that may become necessary by order of the Court, to effectuate the terms and purposes of this Agreement, to secure the Court's approval of it, and to oppose any objections to and appeals from any order of approval.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Representative Plaintiffs (on behalf of themselves and the Class Members), and the Defendants, General Motors Corporation and General Motors of Canada Limited, by and through their respective counsel, in settlement and compromise of the Actions, agree as follows:

**1. DEFINITIONS**

1.1. "Actions" means the following lawsuits:

- (a) *Stewart et al. v. General Motors of Canada Limited et al.*, Ontario Superior Court of Justice, Action No. 06-CV-310082CP;
- (b) *Ely et al. v. General Motors of Canada Limited et al.*, Court of Queen's Bench of Alberta, Judicial District of Edmonton, Action number 0603-05381;

- (c) *Vaidya et al. v. General Motors of Canada Limited et al.*, Court of Queen's Bench of Alberta, Judicial District of Calgary, Action number 0601-06001;
- (d) *Goodridge v. General Motors of Canada Limited et al.*, Supreme Court of British Columbia, Action number S-062846;
- (e) *MacDermid et al. v. General Motors of Canada Limited et al.*, Supreme Court of British Columbia, Action number 06 2057;
- (f) *Turl v. General Motors of Canada Limited et al.*, The Queen's Bench, Winnipeg Centre, Action number C1 06-01-47168;
- (g) *Kilcup et al. v. General Motors of Canada Limited et al.*, The Queen's Bench, Winnipeg Centre, Action number 406 01 47298;
- (h) *Steeves v. General Motors of Canada et al.*, Court of Queen's Bench of New Brunswick, Trial Division, Judicial District of Moncton, Action number MC039906;
- (i) *Scheeler v. General Motors of Canada Limited et al.*, Supreme Court of Newfoundland and Labrador, Trial Division, Action number 2006 01T 2451 CP;
- (j) *Demers v. General Motors of Canada Limited et al.*, Supreme Court of Nova Scotia, Action number S.H. 265628;
- (k) *Jamieson v. General Motors of Canada Limited*, Ontario Superior Court of Justice, Action number 06-CV-310142CP;

- (l) *Townsend et al. v. General Motors of Canada Limited et al.*, Ontario Superior Court of Justice, Action number 06-CV-310869CP;
- (m) *Arsenault v. General Motors of Canada Limited et al.*, Supreme Court of Prince Edward Island, Trial Division, Action number S1 -GS-21982;
- (n) *Gauthier v. General Motors of Canada Limited et al.*, Quebec Superior Court, District of Montreal, Action number 06-000351-060
- (o) *Tsuk v. General Motors of Canada Limited*, Quebec Superior Court, District of Montreal, Action number 06-000353-066;
- (p) *Brooman et al. v. General Motors of Canada Limited et al.*, Court of Queen's Bench, Judicial Centre of Regina, Action number Q.B. No. 917 of 2006;  
and
- (q) *Muz v. General Motors of Canada Limited et al.*, Court of Queen's Bench for Saskatchewan, Judicial Centre of Regina, Action number Q.B.G. No. 1135 of A.D. 2006.

Nothing contained in the definition of "Actions" is intended to, or shall be deemed to, limit the scope of the nationwide settlement or the release contained herein.

1.2. "Agreement" means the agreement set out herein.

1.3. "CCC" means the Customer Communications Centre operated by Aditya Birla Minacs.

1.4. "Certification and Settlement Approval Orders" means the Orders to be issued by the Courts pursuant to this Settlement, substantially in the form attached hereto as Annex A (the Certification and Settlement Approval Order in Quebec shall be substantially in this form with

necessary modifications for Quebec Court approval), which shall include certification, final approval of the Settlement, notice regarding same, the opt-out procedure, and approval of Class Counsel fees.

1.5. "Claim" means a claim to receive a payment under subparagraphs 3.1 and/or 3.2. A Claim consists of a Claim Form, Proof of Expenditure, Proof of Ownership, and in the case of a claim under subparagraph 3.2, Proof of Internal Leak Repair Expense.

1.6. "Claimant" means a Class Member who submits a Claim.

1.7. "Claim Deadline" means April 30, 2009, unless extended by the Courts.

1.8. "Claim Form" means a document substantially in the form of Annex B hereto, which must be submitted by the Class Member, postmarked or received by the CCC by the Claim Deadline, in order to obtain benefits under the Settlement, as described below.

1.9. "Claims Website" means the website to be established by the Claims Administrator to provide information and Claim Forms to Class Members, which shall be established in both French and English.

1.10. "Claims Administrator" means Crawford Class Action Services, the entity retained to arrange for the dissemination of the Notice of Proposed Settlement Approval Hearing and the Notice of Certification and Settlement Approval in accordance with the Notice Plan and Certification and Settlement Approval Orders, and to administer the Settlement and the claims process set forth in subparagraphs 3.1-3.5 and 4.1-4.21 below, including auditing claims processed by the CCC, finally determining which claims are valid if necessary, and sending Settlement payments to Claimants and such other duties as the Courts may direct.

1.11. "Class" means the Ontario National Class and the Quebec Class.

1.12. "Class Counsel" means Co-Lead Counsel and the following counsel in Canada: Kolthammer Batchelor & Laidlaw LLP; Merchant Law Group; Merchant Law Group LLP; Branch MacMaster; Williams & Company/Williams Law Office; Pollock & Company; Barry Spalding Lawyers/Advocats; Aylward, Chislett & Whitten; Gavras Slone Lenehan; Sack Goldblatt Mitchell LLP; Paul J.D. Mullin, Q.C.; Kapoor, Selnes & Klimm; and any other counsel to the Representative Plaintiffs.

1.13. "Class Member" means a member of the Ontario National Class or the Quebec Class.

1.14. "Co-Lead Counsel" means: Stevensons LLP; Koskie Minsky LLP; and Sylvestre, Fafard, Painchaud Advocats.

1.15. "Consumer" means a person who purchases or leases a vehicle for personal, family, or household use, and not for commercial or business purposes. A Consumer specifically does not include an insurer or other business that has fully or partially indemnified its customer for a Qualifying Repair, including under any policy of insurance, any vehicle warranty plan, any extended warranty plan, or any service plan, whether the insurer or other business is purporting to make a claim for benefits under this Settlement in a subrogated capacity or not.

1.16. "Courts" means the Ontario Superior Court of Justice and the Quebec Superior Court.

1.17. "Date of Initial Vehicle Delivery" means the date on which the original retail purchaser or lessee took physical possession of the vehicle as reported by the delivering dealer to GM. In the event that GM does not have a record of such date, August 31<sup>st</sup> of the model year of the vehicle shall be deemed to be the Date of Initial Vehicle Delivery. GM is to deliver a sworn affidavit estimating the percentage of vehicles for which GM does not have a record of

the date on which the original retail purchaser, or lessee, took physical possession of the vehicle as reported by the delivering dealer.

1.18. "Effective Date" means the latest of the following dates: (i) if no appeal from the Certification and Settlement Approval Orders is filed, the date of expiration of the time for the filing any such appeal; or (ii) if an appeal from the Certification and Settlement Approval Orders is filed, the date upon which any such appeal is finally disposed of and, if applicable, the date of expiration of the time for filing any further appeal or leave to appeal application.

1.19. "Engine Group A Vehicle" means any 1995 through 2003 model year vehicle with a 3.1 litre or 3.4 litre V6 engine that was factory-equipped with Dex-Cool coolant and a nylon/silicone lower intake manifold gasket but excluding all 2003 model year vehicles manufactured after April 9, 2003 (vehicles listed in Annex C).

1.20. "Engine Group A Repair" means any lower intake manifold gasket replacement made on an Engine Group A Vehicle within the earlier of 7 years from the Date of Initial Vehicle Delivery or 240,000 kilometres of use.

1.21. "Engine Group B Vehicle" means any 1995 through 2004 model year vehicle with a 3.8 litre V6 engine (RPO L36) that was factory-equipped with Dex-Cool coolant (vehicles listed in Annex D).

1.22. "Engine Group B Repair" means any replacement of a throttle body gasket, upper intake manifold gasket, lower intake manifold gasket, or intake manifold made on an Engine Group B Vehicle within the earlier of 7 years from the Date of Initial Vehicle Delivery or 240,000 kilometres of use.

1.23. "GM" means General Motors Corporation and General Motors of Canada Limited.

1.24. “GM Authorized Independent Dealers” means an automotive dealer that is a party to the General Motors of Canada Limited Dealer Sales and Service Agreement.

1.25. “GM Counsel” means Borden Ladner Gervais LLP and Fraser Milner Casgrain LLP.

1.26. “Notice of Certification and Settlement Approval” means the notices to be made to the Class of the Certification and Settlement Approval Orders, the opt-out procedure, and the claims procedure under this Settlement, substantially in the form attached hereto as Annex E2 and as set out in the Notice Plan for publication in Canada except in the province of Quebec. The Notice of Certification and Settlement Approval published in Quebec shall be in a substantially similar form with necessary modifications for dissemination in Quebec pursuant to the Notice Plan and modifications for Quebec Court approval.

1.27. “Notice of Proposed Settlement Approval Hearing” means the notice to be made to the Class of the proposed settlement approval hearing, substantially in the form attached hereto as Annex E1 and as set out in the Notice Plan for publication in Canada except in the province of Quebec. The Notice of Proposed Settlement Approval Hearing published in Quebec shall be in a substantially similar form with necessary modifications for dissemination in Quebec pursuant to the Notice Plan and modifications for Quebec Court approval.

1.28. “Notice Plan” means the plan for dissemination of the Notice of Proposed Settlement Approval Hearing and the Notice of Certification and Settlement Approval, substantially as outlined in Annex F hereto. The Parties agree that the Notice Plan is fair, adequate, and is reasonable in the circumstances.

1.29. “Ontario National Class” means all Consumers resident in Canada, other than in the province of Quebec, who own or lease, or who have in the past owned or leased, a

Qualifying Vehicle and who incurred an expense from a Qualifying Repair before October 14, 2008.

1.30. "Opt-Out" means any person who validly and timely requests exclusion, within the Opt-Out Deadline, from the Ontario National Class or the Quebec Class.

1.31. "Opt-Out Deadline" means the date on which requests by Class Members for exclusion from the Ontario National Class and the Quebec Class must be postmarked or received by the Claims Administrator to be valid, which date shall be November 30, 2008.

1.32. "Opt-Out Form" means the form to be completed by a Class Member wishing to be excluded from the Ontario National Class or the Quebec Class, substantially in the form attached hereto as Annex G.

1.33. "Parties" means the Representative Plaintiffs and GM.

1.34. "Proof of Expenditure" means contemporaneous documentary proof of an out-of-pocket expenditure by a Class Member on a Qualifying Repair, to the extent not fully reimbursed under a new vehicle warranty, any extended warranty, any service plan, or goodwill adjustment. In the case of an Engine Group A Repair, Proof of Expenditure must document that the repair was made due to a failed lower intake manifold gasket (and was not associated with a larger repair unrelated to a failed lower intake manifold gasket). In the case of an Engine Group B Repair, Proof of Expenditure must document that the repair was made due to a failed throttle body gasket, upper intake manifold gasket, lower intake manifold gasket, or intake manifold (and was not associated with a larger repair unrelated to a failure of one of those four parts). An acceptable form of proof may include any written statement based on personal knowledge by the person or business that performed the repair, such as a repair invoice or receipt. In the event that contemporaneous documentary proof (i.e. an actual repair invoice or other contemporaneous documentary proof of the repair) is not available, then a Claimant may satisfy

the Proof of Expenditure requirement by submitting: (i) a written statement, based on personal knowledge, from the person or business who made the repair indicating that a copy of the actual repair invoice or other documentary proof of the repair is not available and that the repair qualified as an Engine Group A Repair or Engine Group B Repair as described above, such as in the form substantially as it appears in Annex H, and (ii) proof of payment of the repair. If a Claimant is unable to provide the requisite Proof of Expenditure described above, the Claimant may submit the best available written statement or other documents that the Claimant believes demonstrates Proof of Expenditure, and the Claims Administrator and GM, in the exercise of their joint, reasonable discretion, may under subparagraph 4.13, after a review of all such claims, approve or reject the claim (the type of proof of expenditure described in this sentence shall be hereinafter known as “Best Available Proof of Expenditure”).

1.35. “Proof of Internal Leak Repair Expense” means Proof of Expenditure as defined in subparagraph 1.34 above and where the Proof of Expenditure documentation shows that the expenditure was: (i) over \$1,500; and (ii) due to a diagnosed internal coolant leak. For purposes of this Agreement, an internal coolant leak means a diagnosed coolant leak into the Qualifying Vehicle’s internal engine components, as opposed to an external leak where coolant leaks only out of the vehicle’s engine.

1.36. “Proof of Ownership” means documentary proof that, at the time a Qualifying Repair was performed, the Claimant owned or leased the vehicle on which the Qualifying Repair was performed. An acceptable form of proof includes, but is not limited to, a copy of a vehicle registration record, proof of insurance coverage, title certificate, bill of sale, or lease agreement.

1.37. “Qualifying Repair” means any Engine Group A Repair or Engine Group B Repair.

1.38. “Qualifying Vehicle” means an Engine Group A Vehicle or Engine Group B Vehicle.

1.39. “Quebec Class” means all Consumers resident in Quebec who own or lease, or who have in the past owned or leased, a Qualifying Vehicle and who incurred an expense from a Qualifying Repair before October 14, 2008.

1.40. “Released Claims” means any and all claims, demands, debts, rights, causes of action or liabilities whatsoever, including known and unknown claims, now existing or hereafter arising, in law, equity or otherwise, arising under statutory or common law, or foreign statutory or common law, including, but not limited to, claims arising under consumer protection, consumer fraud, or deceptive trade practices statutes, common law breach of contract claims, statutory or common law fraud or misrepresentation claims, breach of fiduciary duty claims, unjust enrichment claims, waiver of tort claims, constructive trust claims, and whether possessed or asserted directly, indirectly, derivatively, representatively or in any other capacity, and whether or not such claims were or could have been raised or asserted before the courts in the Actions, to the extent any such claims are based upon, arise out of, or relate to, in whole or in part, in any way whatsoever, any Qualifying Repair, but excluding all claims for personal injury.

1.41. “Released Persons” means GM, its subsidiaries, affiliates, associates, general or limited partners or partnerships, GM Authorized Independent Dealers, predecessors, successors, and/or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns or insurers and anyone acting on their behalf, individually and collectively.

1.42. “Repair Expense” means the actual out-of-pocket expense incurred by the Claimant for the Qualifying Repair itself including any applicable taxes. For greater clarity, a Repair Expense is net of any reimbursement made to, or available to, the Claimant pursuant to any new vehicle warranty, any extended warranty, any service plan, or goodwill adjustment.

1.43. “Representative Plaintiffs” means the named plaintiffs in the Actions.

1.44. “Request For Review of Rejected Claim Form” means a form substantially as appears in Annex I hereto.

1.45. “Settlement” means the settlement of the Actions as contemplated by the Agreement.

1.46. “VIN” means vehicle identification number.

1.47. The capitalized defined terms in this Agreement shall have the same meaning in any recital, preamble, amendment, annex, appendix, or schedule to this Agreement.

## **2. EXECUTION DATE**

2.1. This Agreement becomes binding upon execution by the Parties through their respective counsel, subject to the termination and rescission clauses in section 9 below.

## **3. SETTLEMENT CONSIDERATION**

### **A. Claims Reimbursements**

3.1. All Class Members who submit a proper Claim Form, Proof of Expenditure, and Proof of Ownership before the Claim Deadline will be eligible to receive payment from the Claims Administrator according to the following payment schedule (unless the Class Member is eligible to, and opts to, receive a payment pursuant to subparagraph 3.2):

- (a) For Class Members who incurred a Repair Expense within five years of the Date of Initial Vehicle Delivery, an amount equal to the Repair Expense, up to a maximum of \$400.
- (b) For Class Members who incurred a Repair Expense in the sixth year after the Date of Initial Vehicle Delivery, an amount equal to the Repair Expense, up to a maximum of \$100.
- (c) For Class Members who incurred a Repair Expense in the seventh year after the Date of Initial Vehicle Delivery, an amount equal to the Repair Expense, up to a maximum of \$50.

3.2. Any Class Member who is eligible to receive cash payment under subparagraph 3.1 (a), may opt to instead receive 40% of the Repair Expense, up to a maximum of \$800, if the Class Member submits Proof of Internal Leak Repair Expense showing a repair costing over \$1,500 due to a diagnosed internal coolant leak.

3.3. The Settlement shall be the exclusive remedy for all Class Members.

3.4. If a Class Member incurred multiple Repair Expenses, the Class Member may submit multiple Claims, however, each Claim must be supported by a separate Claim Form, Proof of Expenditure, Proof of Ownership, and, in the case of a Claim under subparagraph 3.2, Proof of Internal Leak Repair Expense.

3.5. Claims cannot be assigned or transferred in any way. Subrogated Claims cannot be made. To be valid, Claims must be made and signed by the Class Member who incurred the Repair Expense with the one exception that Claims can be made on behalf of deceased Class Members by the executor, trustee, estate trustee, or administrator of a deceased Class Member's estate. The executor, trustee, estate trustee, or administrator, as the case may be, must complete and sign a statutory declaration on the Claim Form testifying to their capacity to act on behalf