

CW 14-21072CP.

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RICKEY BAGGIO, MARGARET MARENTETTE, DANIELLA  
WENZLER and DENNIS WENZLER

Plaintiffs

and

GENERAL MOTORS OF CANADA LIMITED and  
GENERAL MOTORS COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

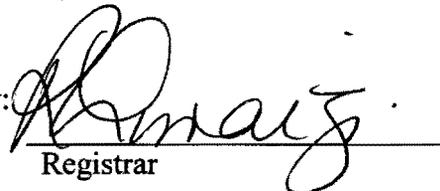
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

July 25, 2014

Issued by:

  
Registrar

Address of Court Office:  
245 Windsor Avenue  
Windsor ON N9A 1J2

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

AND TO:  
**GENERAL MOTORS COMPANY**  
Jefferson Avenue,  
100 Renaissance Center  
Detroit, Michigan 48243

**CLAIM****DEFINED TERMS**

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Baggio**” means Rickey Baggio;
- (b) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended;
- (c) “**Class**” or “**Class Members**” means all persons in Canada who, on April 29, 2014, owned one of the **Vehicles**;
- (d) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended;
- (e) “**Excluded Persons**” means **GM, GMC** and their officers, directors and their heirs, successors and assigns;
- (f) “**GM**” means General Motors Company;
- (g) “**GMC**” means General Motors of Canada Limited;
- (h) “**Marentette**” means Margaret Marentette;
- (i) “**Motor Vehicle Safety Act**” means the *Motor Vehicle Safety Act*, S.C. 1993, c. 16, as amended;
- (j) “**NHTSA**” means the National Highway Traffic Safety Administration;
- (k) “**ODI**” means NHTSA’s Office of Defect Investigation;
- (l) “**Plaintiffs**” means **Baggio, Marentette** and the **Wenzlers**;
- (m) “**Transmission Shift Cable**” means a cable that runs from the cabin gear shift to the transmission linkage;
- (n) “**Vehicles**” means the **Vehicles** subject to Manufacturer Recall Number 14152 and described in paragraph 3;

- (o) **“Vehicle Owner Questionnaire”** means a questionnaire administered by **ODI** and whose response, or statistical summary thereof, is used to assist **NHTSA** in determining whether a manufacturer should take appropriate action to correct a safety defect, and which may be used by **NHTSA** to support its action if it proceeds with administration enforcement or litigation against a manufacturer; and
- (p) **“Wenzlers”** means Daniela Wenzler and Dennis Wenzler.

2. The Plaintiffs, on their own behalf and on behalf of the Class Members, claim:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs;
- (b) general damages and special damages in the amount of \$500,000,000;
- (c) punitive damages and/or aggregated damages in the amount of \$150,000,000;
- (d) a reference to decide any issues not decided at the trial of the common issues;
- (e) prejudgment interest compounded and postjudgment interest pursuant to the *CJA*;
- (f) costs of this action pursuant to the *CPA* and *CJA* on a substantial indemnity basis, the cost of administration and notice pursuant to s. 26(9) of the *CPA* and applicable taxes; and
- (g) such further and other relief as to this Honourable Court seems just.

### **THE NATURE OF THE ACTION**

3. This class action concerns the negligent and dangerous design, manufacture and installation of the defective Transmission Shift Cable in the Vehicles named in the following chart:

<b>MAKE</b>	<b>MODEL</b>	<b>MODEL YEAR</b>
Chevrolet	Malibu	2004 - 2008
Chevrolet	Malibu Maxx	2004 - 2007
Pontiac	G6	2005 - 2008
Saturn	Aura	2007 - 2008

4. GM and GMC failed to advise the owners of the Vehicles and the public about this Transmission Shift Cable which they knew about. This failure by GM and GMC was life threatening. At least 28 crashes and 4 injuries were caused by this defect.

#### **THE PLAINTIFFS**

5. Baggio is a 59 year old worker at GMC residing in the City of Windsor. On May 28, 2009 he purchased a 2005 Pontiac G6. He currently owns this vehicle.

6. Marantette is a 68 year old retiree residing in the City of Windsor. On November 28, 2005 she purchased a 2004 Malibu. She currently owns this vehicle.

7. Dennis Wenzler is a 63 year old accountant residing in the City of Windsor. Daniela Wenzler is a year old retiree residing in the City of Windsor. On July 31, 2006 the Wenzlers purchased a 2005 Malibu Maxx. They currently own this vehicle.

**PARTICULARS OF THE CLASS**

8. The Class is comprised of all persons in Canada who, on April 29, 2014, owned one of the approximate 109,110 Vehicles. The members of the Class are known to GMC and GM.

**GMC'S RELATIONSHIP WITH GM**

9. GM is a corporation organized and existing under the laws of the State of Delaware. GM describes itself as an American corporation with its head office in Detroit, Michigan. GM is responsible for the engineering, design, development, research and manufacture of the Vehicles.

10. GMC is a federally incorporated Canadian company with its head office in Oshawa, Ontario. It was also involved with the engineering, design, development, research and manufacture of the Vehicles. GMC is and was a wholly-owned subsidiary of GM.

11. GMC has four production facilities and offices throughout Canada. At all material times, GMC was the sole distributor of the Vehicles in Canada. It sold the Vehicles through its dealer and retailer network.

12. On June 1, 2009, “old” GM went into bankruptcy in a pre-packaged Chapter 11 reorganization under the United States Code in the United States Bankruptcy Court for the Southern District of New York.

13. On July 10, 2009, “new” GM completed the purchase of the continuing operations, assets, trademarks, and the shares of GMC owned by “old” GM as part of a pre-packaged Chapter 11 reorganization.

14. In this Chapter 11 bankruptcy reorganization, “old” GM did not disclose the dangerous defect in the Transmission Shift Cable in the Vehicles and, as such, the Class Members’ claims are not affected by the bankruptcy.

### **THE DANGEROUS DEFECT IN THE VEHICLES**

15. On May 20, 2011, the ODI opened investigation PE11021 into the 2007 Saturn Aura related to alleged failure of the Transmission Shift Cable resulting in unintended movement of the vehicle. The ODI summary reads:

Date Investigation Opened: MAY 20, 2011  
 Date Investigation Closed: NOV 22, 2011  
 NHTSA Action Number: PE11021  
 Component(s): POWER TRAIN

All Products Associated with this Investigation

Vehicle Make Model Year(s)

- SATURN AURA2007

Manufacturer: General Motors LLC

SUMMARY:

GM advised that the shift cable's protective outer conduit (jacket) deteriorates with time and use. Variables that affect jacket life include installation variability (routing, etc), environmental and temperature effects, and material quality. Jacket deterioration could lead to a tear of the conduit material which allows moisture to reach the lay wires, potentially causing them to corrode and weaken. The lay wires provide support to the inner core wire that performs the shift detent actuation of the transmission. Without sufficient lay wire support, the shifter position inside the vehicle and the actual transmission gear selection may not match. A complete loss of shift function can occur when the core wire fractures and fails fully. GM asserts that the problem primarily affects the four-speed equipped subject vehicles, but not the six-speed transmissions, and notes that similar cable installations are used in other model and MY GM vehicles (2004-2008 Chevrolet Malibu and 2005-2008 Pontiac G6). In reviewing consumer reports ODI notes multiple failure modes that occur as the cable allegedly fails and shift function is affected. One involves an engine no-start condition where the gear shifter is in the park position but the transmission is actually in drive or reverse gear (engine starting is inhibited in this circumstance). A second involves non-powered vehicle movement where the driver turns the engine off and moves the shifter to park but the transmission fails to engage the park gear; the vehicle may roll away if the driver exits without setting the park brake. A third involves powered vehicle movements, where the driver moves the gearshift but the transmission fails to engage the intended gear, and the engine remains running. For instance the driver can shift to park but the transmission may remain in drive or reverse, resulting in vehicle movement when the driver does not expect it. Or the driver may shift to reverse but the transmission remains in drive, resulting in the vehicle moving in a direction opposite to that the driver intended. Another failure mode results in complete loss of shifting. Both NHTSA and GM have received complaints alleging one or more of these failure scenarios, and in some cases consumers report experiencing multiple problems over the course of several drive cycles. In the crash incident reported to NHTSA (ODI 10383044) the driver reportedly placed the gear shift selector into park but the transmission remained in drive causing the vehicle to unexpectedly move (accelerate) forward and strike a building. In one of the crash incidents reported to GM, the driver placed the shifter in park but the transmission remained in reverse. When the driver exited with the engine running, the vehicle continued (accelerated) in reverse and struck a building. In the injury incident reported to GM, the driver reportedly placed the shifter in park, exited the vehicle, and was struck when the vehicle unexpectedly rolled backwards. ODI is upgrading this investigation to evaluate the frequency of shift cable failure, the consequences, and the scope of vehicles that may be affected, including the models, model years and transmissions types.

16. On November 16, 2011, GM and GMC covered the 2007 and 2008 Saturn Aura vehicles equipped with 4 speed transmission and built with Leggett & Platt Transmission Shift Cables with an extended 10-year, 120,000-mile warranty because of

the defect in the Transmission Shift Cables. By this time, GM and GMC knew that the Transmission Shift Cable issue presented a safety defect. But they did not issue a recall at this time.

17. All of the Vehicles produced prior to October 31, 2007 have the same or similar Legget & Platt Transmission Shift Cables as that in the 2007 and 2008 Saturn Aura equipped with 4 speed transmission.

18. Kongsberg Automotive became the production supplier of the Transmission Shift Cable beginning about November 1, 2007.

19. On March 15, 2012, NHTSA sent an Engineering Assessment (EA11-015) request to GM to investigate allegations of failure of the Transmission Shift Cable on some of the Vehicles. During GM's investigation in response to EA11-105, GM noticed elevated warranty rates in its Vehicles built with Kongsberg Automotive Transmission Shift Cable.

20. On September 13, 2012, GM and GMC decided to conduct a safety recall on 2008 – 2010 model years Saturn Aura, Pontiac G6 and Chevrolet Malibu vehicles built with the Kongsberg Transmission Shift Cables. In doing so, GM and GMC acknowledge that vehicles with Kongsberg Transmission Shift Cables presented a safety defect. Although the Vehicles' Legget & Platt Transmission Shift Cables were

functionally analogous to the Kongsberg Transmission Shift Cables subject to the September 13, 2012 recall, GM and GMC refused to issue a recall on its Vehicles.

21. On March 7, 2013, NHTSA sent a second Engineering Assessment to investigate allegations of failure of the Transmission Shift Cable on the following Vehicles: all 2007 – 2008 model year Saturn Aura, Chevrolet Malibu and Pontiac G6s.

22. In February 2014 and April 2014, GM conducted a search of the NHTSA Vehicle Owner Questionnaire, and in April 2014 GM also conducted a search for warranty claims indicating Transmission Shift Cable failures on the Vehicles. Based on this data, GM decided to conduct a recall of all Saturn Aura vehicles with 4-speed transmission on April 22, 2014. GM did not notify NHTSA or Transport Canada at this time.

23. In April and May 2014 GM continued to study the Vehicle Owner Questionnaire and warranty claim data on the Vehicles.

24. On April 29, 2014, GM wrote a letter to NHTSA notifying it that it is recalling some of the Vehicles: all 2007 and some 2008 model year Saturn Aura vehicles with 4-speed transmission. Only Vehicles with Legget & Platt Transmission Shift Cables were recalled. The letter read as follows:

General Motors LLC ~ Global Vehicle Safety

Ms. Nancy Lewis  
Associate Administrator for Enforcement  
National Highway Traffic Safety Administration

Recall Management Division (NVS-215)  
1200 New Jersey Avenue, SE - Room W45-306  
Washington, DC 20590

Dear Ms. Lewis:

The following information is submitted pursuant to the requirements of 49 CFR 573.6 as it applies to a determination by General Motors to conduct a safety related recall for 2007 and some 2008 model year Saturn AURA vehicles.

573.6(c)(1): General Motors Company; Saturn Brand

573.6(c)(2)(3)(4): This information is shown on the attached sheet.

573.6(c)(5): General Motors has decided that a defect which relates to motor vehicle safety exists in 2007 and some 2008 model year Saturn AURA vehicles equipped with a 4-speed automatic transmission (ME7/MN5). These vehicles have a condition in which the transmission shift cable may fracture at any time. When the fracture occurs, the driver may not be able to select a different gear, remove the key from the ignition or place the transmission in park. If the driver cannot place the vehicle in park, and exits the vehicle without applying the park brake, the vehicle could roll away and a crash could occur without prior warning

573.6(c)(6): The issue was presented to the Field Performance Evaluation Review on April 21, 2014, and on April 22, 2014, the Executive Field Action Decision Committee decided to conduct a safety recall. General Motors will be submitting a supplemental chronology within two weeks.

573.6(c)(8): Dealers are to install a shift cable assembly and mounting bracket.

General Motors will provide the dealer bulletin and owner letter mail dates when available.

Pursuant to 577.11, GM will provide reimbursement to owners for repairs completed on or before ten days after the owner mailing is completed, according to the plan submitted on May 23, 2013.

573.6(c)(10): General Motors will provide the dealer bulletin and owner letter under separate cover.

573.6(c)(11): General Motors' assigned recall number is 14152.

Sincerely,  
M. Carmen Benavides, Director  
Field Product Investigations & Evaluations

25. On April 30, 2014, GM reported a safety recall on its Vehicles to NHTSA. The safety recall read as follows:

<b>Report Receipt Date:</b> April 30, 2014		
<b>NHTSA Campaign Number:</b> 14V224000		
Component(s):		
Potential Number of Units Affected: 1.131,113		
All Products Associated with this Recall		
<b>Vehicle Make</b>	<b>Model</b>	<b>Model Years(s)</b>
CHEVROLET	MALIBU	2004-2008
CHEVROLET	MALIBU MAXX	2004-2007
PONTIAC	G6	2005-2008
SATURN	AURA	2007-2008
<b>Manufacturer:</b> General Motors LLC		
<b>SUMMARY:</b>		
<p>General Motors LLC (GM) notified the agency on April 29, 2014, that they are recalling 56,214 model year 2007 and 2008 Saturn Aura vehicles. On May 22, 2014, GM increased the recall to include an additional 1,074,899 model year 2004-2008 Chevrolet Malibu vehicles manufactured from May 16, 2003, through October 5, 2007, model year 2004-2007 Malibu Maxx vehicles manufactured from June 25, 2003, through April 5, 2007, and model year 2005-2008 Pontiac G6 vehicles manufactured from May 26, 2004, through September 28, 2007, and equipped with 4-speed transmissions. The total number of vehicles being recalled is now 1,131,113.</p>		
<b>CONSEQUENCE:</b>		
<p>If the transmission shift cable fractures while the vehicle is being driven, the transmission gear selection may not match the indicated gear and the vehicle may move in an unintended or unexpected direction, increasing the risk of a crash. Furthermore, when the driver goes to stop and park the vehicle, despite selecting the 'PARK' position, the transmission may not be in 'PARK'. If the vehicle is not in the "PARK" position there is a risk the vehicle will roll away as the driver and other occupants exit the vehicle or anytime thereafter. A vehicle rollaway increases the risk of injury to exiting occupants and bystanders.</p>		
<b>REMEDY:</b>		
<p>GM will notify owners, and GM dealers will replace the shift cable and mounting bracket, free of charge. The manufacturer has not yet provided a notification schedule. Owners may contact General Motors at 1-800-553-6000. GM's number for this recall is 13036.</p>		
<b>NOTES:</b>		
<p>Owners may also contact the National Highway Traffic Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to <a href="http://www.safercar.gov">www.safercar.gov</a>.</p>		

26. On May 1, 2014, GM and GMC notified Transport Canada that they are recalling some of the Vehicles: model year 2007 and 2008 Saturn Aura vehicles. This Road Safety Recall reads as follows:

**Road Safety Recalls Database**

**Transport Canada Recall #2014104**

<b>Recall Date</b>	2014/05/01	
<b>Notification Type</b>	Safety Mfr	
<b>System</b>	Powertrain	
<b>Manufacturer Recall Number</b>	14152	
<b>Units affected</b>	3,413	
<b>Category</b>	Car	
<b>Recall Details</b>		
<p>On certain vehicles equipped with 4 speed automatic transmissions, the shift cable could fracture without warning. If this occurs, the driver may not be able to select a different gear position, remove the key from the ignition, or place the transmission in the PARK position. If the driver cannot place the vehicle in the PARK position and exits the vehicle without applying the parking brake, the vehicle could roll away, which could result in a crash causing injury and/or damage to property. Correction: Dealers will install a revised shift cable and mounting bracket.</p>		
<b>Make</b>	<b>Model</b>	<b>Model Year(s) Affected</b>
SATURN	AURA	2007 2008

27. On May 22, 2014, GM wrote a letter to NHTSA, notifying it that it was expanded its recall to cover all of its Vehicles. The letter stated that “[t]his letter supersedes General Motors’ letter of May 13, 2014”. This letter read as follows:

General Motors LLC ~ Global Vehicle Safety

Ms. Nancy Lewis  
Associate Administrator for Enforcement

National Highway Traffic Safety Administration  
Recall Management Division (NVS-215)  
1200 New Jersey Avenue, SE - Room W45-306  
Washington, DC 20590

Re: NHTSA Notification Campaign No. 14V-224

Dear Ms. Lewis:

This letter supersedes General Motors' letter of May 13, 2014, and is submitted pursuant to the requirements of 49 CFR 573.6 as it applies to a determination by General Motors to conduct a safety related recall for 2007 and some 2008 model year (MY) Saturn AURA vehicles. General Motors is expanding this recall to include 2004 – 2008 MY Chevrolet Malibu (GMX380) and 2005 – 2008 MY Pontiac G6 with 4-speed transmissions (MN5); except for vehicles already repaired under safety recall 12106 12V-460 with labor code V2671 or V2672. Specifically, the information submitted pursuant to 49 CFR 573.6(c)(1), 573.6(c)(2)(3)(4), 573.6(c)(6) and 573.6(c)(8) below supersedes information included in General Motors' letter of May 13, 2014.

573.6(c)(1): General Motors Company; Chevrolet, Pontiac and Saturn Brands

573.6(c)(2)(3)(4): This information is shown on the attached sheet.

573.6(c)(5): General Motors has decided that a defect which relates to motor vehicle safety exists in 2004 – 2008 MY Chevrolet Malibu (GMX380) and 2005 – 2008 MY Pontiac G6 with 4-speed transmissions (MN5); except for vehicles already repaired under safety recall 12106 12V-460 with labor code V2671 or V2672 and 2007 and some 2008 MY Saturn AURA vehicles equipped with a 4-speed automatic transmission (ME7/MN5). These vehicles have a condition in which the transmission shift cable may fracture at any time. When the fracture occurs, the driver may not be able to select a different gear or place the transmission in park. If the driver cannot place the vehicle in park, and exits the vehicle without applying the park brake, the vehicle could roll away and a crash could occur without prior warning.

573.6(c)(6): As permitted by the provisions of 49 C.F.R. 573.6(b), and pursuant to the requirements of 49 C.F.R. 573.6(c)(6), General Motors now submits the chronology of principal events that were the basis for the determination that the defect related to motor vehicle safety.

On May 20, 2011, NHTSA sent an opening resume to notify GM that it had opened an investigation into 2007 model year (MY) Saturn Aura vehicles related to alleged failure of the transmission shift cable resulting in unintended movement of the vehicle. On July 7, 2011, NHTSA opened preliminary evaluation PE11-021.

GM provided responses to PE11-021 on August 19, 2011, August 26, 2011, and September 2, 2011. GM found a cable failure mode in which a tear to the conduit jacket could allow moisture to corrode the interior steel wires, resulting in degradation of shift cable performance, and eventually, a possible shift cable failure.

The summary of findings was presented to the Field Performance Evaluation Review Committee on October 21, 2011, and on November 16, 2011, the Executive Field Action Decision Committee decided to conduct a special coverage field action for the 2007-2008 MY Saturn Aura vehicles equipped with 4 speed transmissions and built with Leggett & Platt shift cables. Leggett & Platt shift cables were used in production of vehicles through approximately October 31, 2007. Kongsberg Automotive became the production supplier of shift cables beginning about November 1, 2007.

During the PE investigation, GM informed the NHTSA that the same or similar Leggett & Platt cables were used on certain Saturn Aura vehicles, Pontiac G6 and Chevrolet Malibu (GMX380) vehicles. On March 15, 2012, NHTSA sent an Engineering Assessment (EA11-015) request to investigate allegations of failure of the transmission shift cable on certain 2007-2008 MY Saturn Aura, Pontiac G6 and Chevrolet Malibu vehicles. GM provided a response to this EA on May 4, 2012.

During the investigation in response to EA11-015 regarding the MY 2007-2008 Saturn Aura vehicles, 2007-2008 MY Pontiac G6 and 2007-2008 MY Chevrolet Malibu vehicles, GM noticed elevated warranty rates in vehicles built with Kongsberg shift cables. On these vehicles, the tabs on the transmission shift cable end may fracture and separate without warning, resulting in failure of the transmission shift cable and possible unintended vehicle movement.

The issue was presented to the Field Performance Evaluation Review Committee on September 7, 2012, and on September 13, 2012, the Executive Field Action Decision Committee decided to conduct a safety recall.

The safety recall included all 2008-2010 MY Saturn Aura, Pontiac G6 and Chevrolet Malibu (GMX386 style only) vehicles with 4-speed transmissions (ME7 & MN5) built with Kongsberg shifter cables.

Also included in the safety recall were 2007-2008 MY Saturn Aura, and 2005-2007 MY Pontiac G6 vehicles equipped with 4 speed transmissions (ME7 & ME5) built with Leggett and Platt shift cables which may have been serviced with a Kongsberg cable.

On March 7, 2013, NHTSA sent a second Engineering Assessment to investigate allegations of failure of the transmission shift cable on all 2007-2008 MY Saturn Aura, Chevrolet Malibu (GMX 380 & 386 styles) and Pontiac G6 vehicles. GM provided responses on April 29, 2013, and May 14, 2013.

In February 2014 and April 2014 GM conducted searches of the NHTSA Vehicle Owner Questionnaire (VOQ) database to update GM's information on complaints associated with the transmission shift cable failure on the subject vehicles.

In April 2014 GM also conducted a search for warranty claims and other GM records indicating shift cable failure on the subject vehicles. The data indicated that some vehicle owners were experiencing cable failures after 120,000 miles, outside of the special coverage limitations for the Saturn Aura. The data also indicated some Saturn Aura owners may have been unaware of the special coverage on shift cables for their vehicles. On April 11, 2014, GM and NHTSA had a conference call to discuss the Saturn Aura shift cable failures.

The data update was presented to the Field Performance Evaluation Review Committee on April 21, 2014, and on April 22, 2014, the Executive Field Action Decision Committee decided to conduct a safety recall of the Saturn Aura with 4-speed transmissions (ME7/MN5).

From April 22, 2014, to May 9, 2014, GM continued to study the data for the Malibu GMX380 and the G6 4-speed transmission vehicles. The data appeared to indicate the same cable failure mode found with the Saturn Aura 4-speed transmission, although the failure rate is much lower.

The Malibu GMX380 and the G6 4-speed transmission data analysis was presented to the Field Performance Evaluation Review Committee on May 12, 2014, and on May 19, 2014, the Executive Field Action Decision Committee decided to conduct a safety recall.

573.6(c)(8): Dealers are to inspect the shift cable assembly, and install a shift cable clamshell, or replace the shift cable with a new cable kit and new bracket if necessary.

General Motors will provide the dealer bulletin and owner letter mail dates when available.

Pursuant to 577.11, GM will provide reimbursement to owners according to the plan submitted on May 23, 2013.

573.6(c)(10): General Motors will provide the dealer bulletin and owner letter under separate cover.

573.6(c)(11): General Motors' assigned recall number is 14152.

Sincerely,  
Brian Latouf, Director  
Field Product Investigations & Evaluations

28. On May 22, 2014, GM and GMC reported to Transport Canada that they were expanding the Road Safety Recall to encompass all of their Vehicles. The Road Safety Recall was updated to read as follows:

**Road Safety Recalls Database**

**Transport Canada Recall #2014104**

<b>Recall Date</b>	2014/05/01	
<b>Notification Type</b>	Safety Mfr	
<b>System</b>	Powertrain	
<b>Manufacturer Recall Number</b>	14152	
<b>Units affected</b>	109,110	
<b>Category</b>	Car	
<b>Recall Details</b>		
<p>On certain vehicles equipped with 4 speed automatic transmissions, the shift cable could fracture without warning. If this occurs, the driver may not be able to select a different gear position, remove the key from the ignition, or place the transmission in the PARK position. If the driver cannot place the vehicle in the PARK position and exits the vehicle without applying the parking brake, the vehicle could roll away, which could result in a crash causing injury and/or damage to property. Correction: Dealers will install a revised shift cable and mounting bracket.</p>		
<b>Make</b>	<b>Model</b>	<b>Model Year(s) Affected</b>
CHEVROLET	MALIBU	2004 2005 2006 2007 2008
CHEVROLET	MALIBU MAXX	2004 2005 2006 2007
PONTIAC	G6	2005 2006 2007 2008
SATURN	AURA	2007 2008

29. GM and GMC, through their employees, officers, directors and agents, failed to meet the reasonable standard of conduct (care) expected in the circumstances in that:

- (a) they wrongfully and intentionally accepted the foreseeable risk of injury and loss of life and property damage to the drivers, passengers and the public because of the Transmission Shift Cable defect;
- (b) notwithstanding that they foresaw personal injuries and the loss of life and property of the drivers and passengers in the Vehicles, they failed to eliminate or correct the Transmission Shift Cable defect;
- (c) they knew or ought to have known about the Transmission Shift Cable defect and should have announced it to the public;
- (d) they designed, developed, tested, manufactured, assembled, distributed and sold a defective Transmission Shift Cable;
- (e) they knew that the Leggett & Platt Transmission Shift Cables were defective on November 16, 2011, but they failed to issue a safety recall on the Vehicles at that time;
- (f) they failed to warn the drivers, passengers and the public about the defective Transmission Shift Cable until April 29, 2014;
- (g) they failed to change the design, manufacture and assembly of the Transmission Shift Cable in a reasonable and timely manner;
- (h) they failed to properly test the Transmission Shift Cable;
- (i) they failed to establish any, or any adequate, procedures to ensure that the design of the Transmission Shift Cable was adequate;

- (j) they failed to establish any, or any adequate, procedures for evaluating the design defects of the Transmission Shift Cable;
- (k) they failed to properly instruct their employees to evaluate the injuries and accidents involving the Transmission Shift Cable;
- (l) they failed to review and evaluate the accidents and complaints about the Transmission Shift Cable;
- (m) they failed to initiate timely review, evaluation and investigation of the Transmission Shift Cable and its failure following complaints, injuries and deaths if a malfunction occurred;
- (n) they failed to review, evaluate, and maintain all records of written and oral complaints relative to the reliability, safety, effectiveness and performance of the Transmission Shift Cable;
- (o) they failed to implement a safety recall until April 29, 2014;
- (p) they knew or ought have known that the Vehicles suffered from this design defect in the Transmission Shift Cable;
- (q) they failed to conform with good manufacturing practices;
- (r) they hired incompetent personnel;
- (s) they failed to properly supervise their employees;
- (t) they knew or ought to have known from reports to them that the Transmission Shift Cable would fracture and cause the Vehicles to roll away, which would increase the risk the safety to the drivers, passengers and the public;
- (u) they failed to protect the Class Members and the public;

- (v) they failed to make full, frank and complete disclosure to the regulators, the public, their customers and the Class Members;
- (w) they failed to institute a proper risk/management system;
- (x) they failed, until April 29, 2014, to adequately warn owners and drivers of the Vehicles that there was a serious risk of injury associated with the Vehicles; and
- (y) they failed to exercise reasonable care and judgment.

### **GENERAL AND SPECIAL DAMAGES**

30. As a result of the dangerous defect in the Transmission Shift Cable in the Vehicles, and the failure by GM and GMC to disclose this safety issue about the Transmission Shift Cable until April 29, 2014, the Class has suffered and will continue to suffer damages. The value of each of the Vehicles is reduced. Each Class Member must expend the time to have his/her Vehicle repaired and be without their motor vehicles. GM and GMC should compensate each Class Member for their child care costs, income and other losses and inconvenience. Some Class Members have incurred out of pocket expenses for, among other things, alternative transportation and prior repairs to the Transmission Shift Cable.

31. The Class Members cannot get the Transmission Shift Cable repaired immediately because GM and GMC do not have the parts and service capability to repair their Vehicles. The Class Members must drive a dangerous Vehicle. They are

entitled to have GMC supply a replacement vehicle or a “courtesy car” until GMC fixes the Transmission Shift Cable at no cost to the Class Members.

32. The Plaintiffs have driven their Vehicles less than they otherwise would due to fear of being in an accident. They have taken taxis and public transportation. They have incurred expenses.

33. The Plaintiffs plead that the Class Members’ damages were sustained in Ontario and in the rest of Canada.

#### **PUNITIVE DAMAGES**

34. GM’s conduct and GMC’s conduct described above was arrogant, high-handed, outrageous, reckless, wanton, entirely without care, deliberate, secretive, callous, willful, disgraceful, in contemptuous disregard of the Class’ rights, intentionally disregarded the interests of the Class Members and the public. For such abhorrent conduct and motivated by economic consideration, GM and GMC are liable to pay punitive and aggravated damages.

#### **THE RELEVANT STATUTES**

35. The Plaintiffs plead and rely upon the provisions of the *CPA*, *CJA* and *Motor Vehicle Safety Act*.

**PLACE OF TRIAL**

36. The Plaintiffs propose that this action be tried in the City of Windsor.

**SERVICE**

37. This originating process may be served without court order outside

Ontario in that the claim is:

- (a) in respect of a tort committed in Ontario (rule 17.02(g));
- (b) in respect of damages sustained in Ontario arising from a tort wherever committed (rule 17.02(g));
- (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
- (d) against a person carrying on business in Ontario (rule 17.02(p)).

July 25, 2014

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Defendants

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
WINDSOR

**STATEMENT OF CLAIM**

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