

CV 14-20849 CP

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ELIZABETH PICCOLO, CARLY SPINA, GILLES SPINA and
ELEANOR MOORE

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.

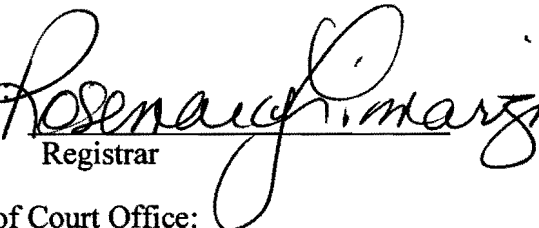
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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.

June 2, 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) “**Body Control Module**” means an electronic control unit responsible for monitoring and controlling various electronic accessories in the vehicle’s body, and which communicates with other onboard computers;
- (b) “**Brake Apply Sensor Circuit**” means an electromechanical sensor that senses the brake pedal motion, switches on the brake lights and assists in disengaging of the cruise control;
- (c) “**CJA**” means the Ontario *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended;
- (d) “**Class**” or “**Class Members**” means all persons in Canada who on May 14, 2014 owned one of the **Vehicles**;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended;
- (f) “**Excluded Persons**” means **GM, GMC** and their officers, directors and their heirs, successors and assigns;
- (g) “**GM**” means General Motors Company;
- (h) “**GMC**” means General Motors of Canada Limited;
- (i) “**Moore**” means Eleanor Moore;
- (j) “**Motor Vehicle Safety Act**” means the *Motor Vehicle Safety Act*, S.C. 1993, c. 16, as amended;
- (k) “**NHTSA**” means the National Highway Traffic Safety Administration;
- (l) “**ODI**” means NHTSA’s Office of Defect Investigation;
- (m) “**Piccolo**” means Elizabeth Piccolo;

- (n) **“Plaintiffs”** means **Moore, Piccolo, and the Spinis**;
- (o) **“Spinis”** means Carly Spina and Gilles Spina; and
- (p) **“Vehicles”** means the **Vehicles** described in paragraph 3.

2. The Plaintiffs, on their own behalf and on behalf of all 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 Body Control Module in the Vehicles named in the following chart:

MAKE	MODEL	MODEL YEAR
Chevrolet	Malibu	2004 - 2012
Chevrolet	Malibu Maxx	2004 - 2007
Pontiac	G6	2005 - 2010
Saturn	Aura	2007 - 2010

4. GM and GMC failed to advise the owners of the Vehicles and the public about this Body Control Module defect which GM and GMC knew about. This failure by GM and GMC was life threatening. At least 13 crashes and two injuries were caused by this defect.

THE PLAINTIFFS

5. Piccolo is a 47 year old patient transporter at a local hospital residing in the City of Windsor. On January 25, 2011, she purchased a 2008 Pontiac G6. She currently owns this vehicle.

6. Carly Spina is a 30 year old dental receptionist. Gilles Spina is 32 year old general labourer. On October 13, 2011, the Spinas purchased a 2006 Chevrolet Malibu Maxx. They currently own this vehicle.

7. Moore is a 65 year old retiree. On October 9, 2013, she purchased a 2009 Chevrolet Malibu. She currently owns this vehicle.

PARTICULARS OF THE CLASS

8. The Class is comprised of all persons in Canada who on May 14, 2014 owned one of the approximate 194,314 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 Body Control Module in the Vehicles and, as such, the Class Members' claims are not affected by the bankruptcy.

THE DANGEROUS DEFECT IN THE VEHICLES

15. On December 4, 2008, GM and GMC issued a Service Bulletin on its Vehicles to its dealers. But GM and GMC did not order a safety recall at this time. The Service Bulletin read as follows:

Subject: Intermittently Brake Lights (Stop Lamp) Do Not Function Correctly, Extended Travel to Shift Out of Park, Cruise Control Inoperative, DTCs C0161/C0277 Set (Perform Repair as Outlined)

Models: 2004-2007 Chevrolet Malibu, Malibu Maxx
2008 Chevrolet Malibu Classic
2005-2009 Pontiac G6
2007-2009 Saturn AURA

Condition

Some customers may comment that intermittently the brake lights do not function correctly. Other symptoms may include extended pedal travel required to shift out of PARK, cruise control does not function correctly, and DTC C0161 and/or C0277 may be set.

Cause

The most likely cause of this condition is high resistance due to terminal fretting corrosion in the body control module (BCM) C2 connector (specifically pins C2-18, C2-31 and C2-59).

Correction

DO NOT replace the BCM for this condition. Disconnecting the C2 connector, adding dielectric silicone grease and reconnecting the C2 connector per the procedure below will correct the high resistance condition due to terminal fretting corrosion.

- (1) Remove the right side front floor console side trim panel to access to the Body Control Module (BCM).
- (2) Locate the C2 connector on the BCM.
- (3) Unlatch the C2 connector and disconnect the C2 connector from the BCM.
- (4) Reconnect the C2 connector back on the BCM and re-latch.
- (5) Repeat Steps 3 and 4 (this step cleans up the terminal fretting corrosion).
- (6) Using the Tech 2®, verify the brake pedal position sensor (BPPS) voltage is between:
 - 0.88V - 2.11V (for 2004-2006 model years)
 - 0.73V - 1.47V (for 2007-2009 model years)
- (7) Check for proper operation of the brake lights.
 - If the brakes lights are operating properly, remove the C2 connector again from the BCM and proceed to Step 8.
 - If the brake lights are not operating properly, proceed to Step 12.
- (8) Apply dielectric lubricant (clear gel) GM P/N 12377900 (In Canada, use P/N 10953529) on the BCM C2 pins (apply with a one-inch nylon bristle

brush) on all the C2 connector pins (this will treat the pins against fretting corrosion).

- (9) Reconnect the C2 connector back on the BCM and re-latch.
- (10) Reinstall the right side front floor console side trim panel.
- (11) Using the Tech 2®, check that the BPPS ratio is equal to BPPS learned home when the brake pedal is not depressed.
 - If they are equal, brake lamps should be operating correctly and no further steps are necessary.
 - If they are not equal, perform the Brake Pedal Position Sensor
- (12) Calibration procedure in SI to complete the repair.

16. On February 4, 2013, NHTSA's ODI opened Recall Query RQ13-001 into some of the Vehicles "to determine whether the subject vehicles present a safety-related defect trend." Still, GM and GMC did not issue a safety recall. The ODI summary states:

NHTSA Action Number: EA13005 Brake Light Malfunction

SUMMARY:

The Office of Defects Investigation (ODI) opened Recall Query RQ13 on February 4, 2013 in response to complaints alleging that the brake lights do not operate properly on model year (MY) 2005-2008 Pontiac G6 vehicles. Complainants allege that the brake lights illuminate when the brake pedal is not depressed, and turn off once the pedal is applied. In addition the driver may have difficulty shifting out of PARK, or the cruise control may not engage properly. In response to ODI's Information Request, General Motors (GM) submitted a significant number of warranty claims and over 1,100 reports that potentially relate to the alleged problem. ODI is continuing its analysis of this data. One of the GM reports also alleged a vehicle crash. ODI has received a total of 314 complaints, one alleging a crash. Based on the agency's current analysis, ODI has upgraded its investigation to determine whether the subject vehicles present a safety related defect trend, and to further evaluate scope. The ODI complaints cited above can be reviewed at: <http://www-odi.nhtsa.dot.gov/owners/SearchNHTSAID>, see the attached list for ODI numbers.

17. On May 14, 2014, GM reported a safety recall on its Vehicles to the NHTSA. The safety recall read as follows:

Report Receipt Date: May 14, 2014

NHTSA Campaign Number: 14V252000

Component(s): ELECTRICAL SYSTEM, ELECTRONIC STABILITY CONTROL, EXTERIOR LIGHTING, SERVICE BRAKES, HYDRAULIC, VEHICLE SPEED CONTROL

All Products Associated with this Recall

Vehicle Make	Model	Model Years(s)
CHEVROLET	MALIBU	2004-2012
CHEVROLET	MALIBU MAXX	2004-2007
PONTIAC	G6	2005-2010
SATURN	AURA	2007-2010

Manufacturer: General Motors LLC

SUMMARY:

General Motors LLC (GM) is recalling certain model year 2004-2012 Chevrolet Malibu vehicles manufactured May 16, 2003 through October 11, 2012, 2004-2007 Malibu Maxx vehicles manufactured June 25, 2003, through April 5, 2007, 2005-2010 Pontiac G6 vehicles manufactured May 26, 2004, through January 4, 2010, and 2007-2010 Saturn Aura vehicles manufactured April 24, 2006, through May 26, 2009. In the affected vehicles, increased resistance in the Body Control Module (BCM) connection may result in voltage fluctuations in the Brake Apply Sensor (BAS) circuit. These fluctuations can cause one or more of these conditions: the brake lights to illuminate without the brake pedal being pushed; the brake lights to not illuminate when the pedal is pushed; difficulty disengaging the cruise control; moving the gear shifter out of the 'PARK' position without pushing the brake; and disablement of crash avoidance features such as traction control, electronic stability control, and panic braking assist features.

CONSEQUENCE:

Any of the above failure conditions increases the risk of a crash.

REMEDY:

GM will notify owners, and dealers will attach the wiring harness to the BCM with a spacer, apply dielectric lubricant to both the BCM and harness connector and the BAS and harness connector, and will relearn the brake pedal home position, free of charge. The manufacturer has not yet provided a notification schedule. Owners may contact General Motors customer service at 1-800-222-1020 (Chevrolet), 1-800-762-2737 (Pontiac), 1-800-553-6000 (Saturn). GM's number for this recall is 13036.

NOTES:

Owners may also contact the National Highway Traffic Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to www.safercar.gov.

18. On May 14, 2014, GM and GMC sent the following letter to each dealer about the anticipated "Safety Recall" for the defective Body Control Module:

GM CUSTOMER CARE AND AFTERSALES
DCS3228
URGENT - DISTRIBUTE IMMEDIATELY

Date: May 14, 2014

Subject: Upcoming Safety Recall - 13036
Brake Lamp Malfunction

Models: 2004-2012 Chevrolet Malibu
2004-2007 Chevrolet Malibu Maxx
2005-2010 Pontiac G6
2007-2010 Saturn Aura

To: All General Motors Dealers

Attention: General Manager, Service Advisor, Service Manager,
Parts and Service Director, Parts Manager, Used Vehicle
Sales Manager, and Warranty Administrator

General Motors has notified the National Highway Traffic Safety Administration (NHTSA) about an upcoming safety recall that involves all 2004-2012 model year (MY) Chevrolet Malibu, 2004-2007 MY Chevrolet Malibu Maxx, 2005-2010 MY Pontiac G6 and 2007-2010 MY Saturn Aura vehicles. The GM recall number is 13036.

On these vehicles, over time an increased resistance can develop in the Body Control Module (BCM) connection system and result in voltage fluctuations or intermittency in the Brake Apply Sensor (BAS) circuit that can cause service brake lamp malfunction. As a result, the service brake lamps may illuminate when the service brakes are not being applied, or may not illuminate when the service brakes are being applied. Additionally, cruise control may not engage. If cruise control is engaged, additional service brake pedal travel may be required to disengage it. Service brake pedal application may not be required to move the shift lever out of PARK, or additional service brake pedal travel may be required to move the shift lever out of PARK. Traction control, electronic stability control, and panic braking assist features, if equipped,

may be disabled. Service ESC and/or Traction Control tell-tales may illuminate with this condition. These conditions may increase the risk of a crash.

To correct these conditions, dealers are to attach the wiring harness to the BCM with a spacer, apply dielectric lubricant to both the BCM and harness connector and on the BAS and harness connector, and relearn the brake pedal home position.

This is a courtesy notification to dealers. Dealers will be advised when the recall bulletin and customer notification letter are scheduled for release.

The Investigate Vehicle History screen in the Global Warranty Management system will be updated when the bulletin is released.

Please do not call GM Technical Assistance.

END OF MESSAGE
GM CUSTOMER CARE AND AFTERSALES

19. On May 15, 2014, GM and GMC sent another letter to each dealer. This letter included a Question and Answer attachment. The attachment stated in part, as follows:

Q4. How did you discover the condition?

A4 Customer complaints and warranty claims.

Q5. Have there been any reports from the field of crashes or injuries related to this condition?

A5 GM is aware of 13 crashes and two injuries, but no fatalities as a result of the condition.

Q6 Why are we recalling these vehicles now after the actions taken in 2009?

A6 Based on data gathered through additional investigation and field evaluation process it was determined that these vehicles may have the same condition as those vehicles involved in a safety recall in 2009.

Q7 Did NHTSA pressure us to do this recall?

A7 There was a NHTSA and Transport Canada investigation on this issue.

20. On May 16, 2014, GM and GMC reported a safety recall on its Vehicles to Transport Canada. The safety recall read as follows:

Road Safety Recalls Database

Transport Canada Recall #2014173

Recall Date	2014/05/16	
Notification Type	Safety TC	
System	Electrical	
Manufacturer Recall Number	13036	
Units affected	194,314	
Category	Car	
Recall Details		
On certain vehicles, intermittent electrical connection faults may cause the brake lamps to illuminate without the brake pedal being depressed, or not illuminate when the brake pedal is depressed. This could also interfere with cruise control, ABS and/or vehicle stability control function. Failure of the brake lights to illuminate when the brake pedal is depressed or erratic brake lamp function could increase the risk of a crash causing property damage and/or personal injury. Correction: Dealers will affect repairs.		
Make	Model	Model Year(s) Affected
CHEVROLET	MALIBU	2004 2005 2006 2007 2008 2009 2010 2011 2012
CHEVROLET	MALIBU MAXX	2004 2005 2006 2007
PONTIAC	G6	2005 2006 2007 2008 2009 2010
SATURN	AURA	2007 2008 2009 2010

21. 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 Body Control Module 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 Body Control Module defect;
- (c) they knew or ought to have known about the Body Control Module defect and should have announced it to the public;
- (d) they designed, developed, tested, manufactured, assembled, distributed and sold a defective Body Control Module;
- (e) they failed to warn the drivers, passengers and the public about the defective Body Control Module until May 14, 2014;
- (f) they failed to change the design, manufacture and assembly of the Body Control Module in a reasonable and timely manner;
- (g) they failed to properly test the Body Control Module;
- (h) they failed to establish any, or any adequate, procedures to ensure that the design of the Body Control Module was adequate;
- (i) they failed to establish any, or any adequate, procedures for evaluating the design defects of the Body Control Module;
- (j) they failed to properly instruct their employees to evaluate the injuries and accidents involving the Body Control Module;
- (k) they failed to review and evaluate the accidents and complaints about the Body Control Module;

- (l) they failed to initiate timely review, evaluation and investigation of the Body Control Module and its failure following complaints, injuries and deaths if a malfunction occurred;
- (m) they failed to review, evaluate, and maintain all records of written and oral complaints relative to the reliability, safety, effectiveness and performance of the Body Control Module;
- (n) they failed to implement a safety recall until May 16, 2014;
- (o) they knew or ought have known that the Vehicles suffered from this design defect in the Body Control Module;
- (p) they failed to conform with good manufacturing practices;
- (q) they hired incompetent personnel;
- (r) they failed to properly supervise their employees;
- (s) they knew or ought to have known from reports to them that increased resistance in the Body Control Module connection may result in voltage fluctuations in the Brake Apply Sensor circuit and risk the safety to the drivers, passengers and the public;
- (t) they failed to protect the Class Members and the public;
- (u) they failed to make full, frank and complete disclosure to the regulators, the public, their customers and the Class Members;
- (v) they failed to institute a proper risk/management system;
- (w) they failed, until May 14, 2014, to adequately warn owners and drivers of the Vehicles that there was a serious risk of injury associated with the Vehicles; and
- (x) they failed to exercise reasonable care and judgment.

GENERAL AND SPECIAL DAMAGES

22. As a result of the dangerous defect in the Body Control Module in the Vehicles, and the failure by GM and GMC to disclose this safety issue about Body Control Module until 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 Body Control Module.

23. The Class Members cannot get the Body Control Module 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 Body Control Module at no cost to the Class Members.

24. 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.

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

PUNITIVE DAMAGES

26. 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

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

PLACE OF TRIAL

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

SERVICE

29. 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)).

June 2, 2014

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ELIZABETH PICCOLO et al.
Plaintiffs

-and- GENERAL MOTORS OF CANADA LIMITED et al.
Defendants

CV14-20849CA
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
WINDSOR

STATEMENT OF CLAIM

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