

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ACADEMIE STE CECILE INTERNATIONAL SCHOOL,
DONALD CHARTRAND, MARIA GABRIELE,
DAVID JOHNSTON, TRACY PANCHUK,
DOUGLAS PARENT and KAREN YOELL

Plaintiffs

and

GENERAL MOTORS OF CANADA LIMITED and
GENERAL MOTORS COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

Notice of Action issued on April 3, 2013

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) “**ASCIS**” means Academie Ste Cecile International School;
- (b) “**Boyer**” means Jeff Boyer;
- (c) “**Chartrand**” means Donald Chartrand;
- (d) “**CJA**” means the Ontario *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended;

- (e) **“Class”** or **“Class Members”** means all persons in Canada who, on March 31, 2014, owned one of the **Vehicles**;
- (f) **“CPA”** means the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended;
- (g) **“EPS”** means electric power steering;
- (h) **“Excluded Persons”** means **GM, GMC** and their officers, directors and their heirs, successors and assigns;
- (i) **“Gabriele”** means Maria Gabriele;
- (j) **“GM”** means General Motors Company;
- (k) **“GMC”** means General Motors of Canada Limited;
- (l) **“Johnston”** means David Johnston;
- (m) **“NHTSA”** means the National Highway Traffic Safety Administration;
- (n) **“Panchuk”** means Tracy Panchuk;
- (o) **“Parent”** means Douglas Parent;
- (p) **“Plaintiffs”** means **ASCIS, Chartrand, Gabriele, Johnston, Panchuk, Parent** and **Yoell**;
- (q) **“Vehicles”** means the **Vehicles** described in paragraph 3; and
- (r) **“Yoell”** means Karen Yoell.

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 \$300,000,000;
- (c) punitive damages and/or aggregated damages in the amount of \$100,000,000;

- (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 plus the cost of administration and notice pursuant to s. 26(9) of the *CPA* plus 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 EPS in the Vehicles named in the following chart:

MAKE	MODEL	MODEL YEARS: INCLUSIVE
Chevrolet	Malibu	2004 to 2006, 2008 to 2009
Chevrolet	Malibu Maxx	2004 to 2006
Chevrolet	Cobalt	2005 to 2010
Chevrolet	HHR	2009 to 2010
Pontiac	G5	2007 to 2010
Pontiac	G6	2005 to 2006, 2008 to 2009
Pontiac	Pursuit	2005 to 2006
Saturn	Ion	2004 to 2007
Saturn	Aura	2008 to 2009

4. GM and GMC failed to advise the owners of the Vehicles and the public about this EPS defect which they knew about. This failure by GM and GMC was life threatening. NHTSA's analysis of steering related crashes identified 12 incidences where the evidence indicated the crash was related to a defective EPS leading to a loss of electric power assist. Two of the 12 crashes resulted in injuries to the drivers.

THE PLAINTIFFS

5. ASCIS is a provincially incorporated company without share capital that operates a private day and resident, elementary and secondary school. On June 26, 2010, ASCIS purchased a 2010 Chevrolet Cobalt. It currently owns this vehicle.

6. Chartrand is a 58 year old retiree residing in the City of Windsor. On April 15, 2009, he purchased a 2009 Chevrolet HHR. He currently owns this vehicle.

7. Gabriele is a 52 year old food and service worker residing in the Town of LaSalle. On August 29, 2009, she purchased a 2009 Pontiac G6. She currently owns this vehicle.

8. Johnston is a 23 year old roofer residing in the City of Windsor. On or about 2012, he purchased a 2005 Saturn Ion. He currently owns this vehicle.

9. Panchuk is a 53 year old book keeper residing in the City of Windsor. On January 14, 2009, she purchased a 2005 Pontiac Pursuit. She currently owns this vehicle.

11. Yoell is a 57 year old homemaker residing in the City of Windsor. On June 24, 2009, she purchased a 2005 Saturn Ion. She currently owns this vehicle.

PARTICULARS OF THE CLASS

12. The Class is comprised of all persons in Canada who, on March 31, 2014, owned one of the approximate 145,700 Vehicles. The members of the Class are known to GMC and GM.

GMC'S RELATIONSHIP WITH GM

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

THE DANGEROUS DEFECTS IN THE VEHICLES

19. EPS is a system made up of a steering column, a gear assist mechanism attached to this column, a brushless motor, a controller and a sensor within the steering column.

20. On March 31, 2014, GM reported a safety recall for defective EPS on its Vehicles to the NHTSA but not to Transport Canada.

21. On March 31, 2014, GM sent the following letter to all GM and GMC dealers about a "Safety Recall" for the defective EPS:

Date: March 31, 2014

Subject: Upcoming Safety Recall – Electric Power Steering

Models: All 2004-2005 and some 2006, 2008-2009 Chevrolet Malibu
 All 2004-2005 and some 2006 Chevrolet Malibu Maxx
 Some 2009-2010 Chevrolet HHR (non-turbo)
 Some 2010 Chevrolet Cobalt
 Some 2008-2009 Saturn Aura
 All 2004-2007 Saturn ION
 All 2005 and some 2006, 2008-2009 Pontiac G6
 Serviced Parts Installed Under Safety Recall 10023
 Prior to May 31, 2010

To: All Chevrolet and GMC Dealers

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

Today, General Motors notified the National Highway Traffic Safety Administration (NHTSA) about a safety recall that involves all 2004-2005 and some 2006, 2008-2009 Chevrolet Malibu, all 2004-2005 and some 2006 Chevrolet Malibu Maxx, some 2009-2010 Chevrolet HHR (non-turbo), some 2010 Chevrolet Cobalt, some 2008-2009 Saturn Aura, all 2004-2007 Saturn ION, all 2005 and some 2006, 2008-2009 Pontiac G6, and serviced parts installed under Safety Recall 10023 prior to May 31, 2010.

Vehicles that were included in Safety Recall 10023 are not included unless they were repaired prior to May 31, 2010. Vehicles that were repaired under special coverage bulletin numbers 10183 and 10187 are not included. Vehicles that were repaired with parts without defective components are not included in this recall.

General Motors has decided that a defect, which relates to motor vehicle safety, exists in the vehicles identified above. The subject vehicles equipped with electric power steering (EPS) may experience a sudden loss of power steering assist that could occur at any time while driving. If the power steering assist is lost, a message is displayed on the Driver Information Center and a chime sounds to inform the driver. Steering control can be maintained, as the vehicle will revert to a manual steering mode, but would require greater driver effort at low vehicle speeds, which could result in an increased risk of a crash.

GM is working with suppliers to obtain the required parts as soon as possible. Dealers will be advised in the near future when the recall bulletins are being released. Initial owner notification letters about the recall is expected to be mailed the week of April 28, 2014. A second owner letter will be mailed and the formal dealer bulletin and special coverage bulletin will be provided when parts are available.

GM anticipates that the Investigate Vehicle History screen in the Global Warranty Management system will be updated the week of April 7, 2014.

Due to different dealer repairs, the bulletins will be released as described below.

Bulletin number 14115:

Model and Model Years: 2004-2007 Saturn ION vehicles
2009-2010 HHR (non-turbo)
2010 Chevrolet Cobalt
Service Parts

Dealers are to replace the power steering motor.

Bulletin number 14116:

Model and Model Years: 2004-2006 Chevrolet Malibu/Malibu Maxx
2005-2006 Pontiac G6
2008-2009 Chevrolet Malibu, Pontiac G6
and Saturn Aura built from 3-1-08 thru
6-27-08

Dealers are to replace the torque sensor assembly.

Bulletin number 14117:

Model and Model Years: 2008 Chevrolet Malibu, Pontiac G6 and
Saturn Aura built from 2-1-08 thru 2-28-08

Dealers are to replace the torque sensor assembly and power steering motor controller unit.

Bulletin number 14118:

Model and Model Years: 2008 Chevrolet Malibu, Pontiac G6 and
Saturn Aura built from 10-1-07 thru
1-31-08

Dealers are to replace power steering motor controller unit.

Note: A special coverage (GM bulletin number 14119) will be implemented for MY 2006-2008 and early production of 2009 Chevrolet HHR (non-turbo) and MY 2003 Saturn ION to provide EPS Motor replacement for the life of the vehicle.

Please do not call GM Technical Assistance.

END OF MESSAGE
GM CUSTOMER CARE AND AFTERSALE

22. On March 31, 2014, GM and GMC issued a press release that stated that the Vehicles equipped with EPS may experience a sudden loss of electric power assist that could occur at any time while driving. In the press release GM and GMC state the reason for this recall:

GM Recalls Older Model Vehicles to Fix Power Steering

2014-03-31

OSHAWA –General Motors informed the National Highway Traffic Safety Administration and Transport Canada today that it would recall more than 1.3 million vehicles in the U.S. (145,700 in Canada) that may experience a sudden loss of electric power steering assist.

If power steering assist is lost, a message displays on the Driver Information Center and a chime sounds to inform the driver. Steering control can be maintained because the vehicle will revert to manual steering, but greater driver effort would be required at low vehicle speeds, which could increase the risk of a crash.

Models subject to safety recall are the:

- Chevrolet Malibu: All model year 2004 and 2005, and some model year 2006 and model year 2008 and 2009 vehicles
- Chevrolet Malibu Maxx: All model year 2004 and 2005, and some 2006 model year
- Chevrolet HHR (Non-Turbo): Some model year 2009 and 2010 vehicles

- Chevrolet Cobalt: Some model year 2010 vehicles
- Saturn Aura: Some model year 2008 and 2009 vehicles
- Saturn ION: All model year 2004 to 2007 vehicles
- Pontiac G6: All model year 2005, and some model year 2006 and model year 2008 and 2009 vehicles
- Service parts installed into certain vehicles before May 31, 2010 under a previous safety recall

Depending on the vehicle, GM will replace free of charge either the power steering motor, the steering column, the power steering motor control unit or a combination of the steering column and the power steering motor control unit. Customers who previously paid for repairs of these parts would be eligible for reimbursement.

In addition, 309,160 non-turbocharged Chevrolet HHRs from the 2006-2008 model years (and several hundred 2009 models) and 96,324 Saturn IONs from the 2003 model year that are not subject to these recalls will be given lifetime warranties for replacement of the electronic power steering motor.

“With these safety recalls and lifetime warranties, we are going after every car that might have this problem, and we are going to make it right,” said Jeff Boyer, vice president, GM Global Vehicle Safety. “We have recalled some of these vehicles before for the same issue and offered extended warranties on others, but we did not do enough.”

The 2004-2007 Saturn ION, the 2009-2010 Chevrolet HHR and the 2010 Chevrolet Cobalt are included in previously announced recalls for ignition switches that may not meet GM specification for torque performance. Repairs for the ignition switch and power steering assist may require separate dealership visits depending on parts availability.

GM expects to take a charge of up to approximately \$750 million in the first quarter, primarily for the cost of recall-related repairs announced in the quarter. This amount includes a previously disclosed \$300 million charge for three safety actions announced on March 17 and the ignition switch recall announced Feb. 25.

About General Motors in Canada

Headquartered in Oshawa, Ontario, General Motors of Canada Limited (GMCL) employs more than 9,000 people across the country and is a recognized leader in green manufacturing. GMCL markets the full range of fuel-efficient Chevrolet, Buick, GMC and Cadillac vehicles and related services through Canada's largest automotive dealer network. More information regarding GMCL models can be found at www.gm.ca, or by following @GMCanada on Twitter.

23. On April 1, 2014, there was a Road Safety Recall concerning the Vehicles by Transport Canada. This Road Safety Recall reads as follows:

Road Safety Recalls Database

Transport Canada Recall #2014104

Recall Date	2014/04/01	
Notification Type	Safety Mfr	
System	Steering	
Manufacturer Recall Number	14115	
Units affected	145,700	
Category	Car	
Recall Details		
<p>Certain vehicles equipped with electric power steering may experience a sudden loss of power steering assist that could occur at any time while driving. If the Power steering assist is lost, a message is displayed on the Driver Information Centre and a chime sounds to inform the driver. Steering control can be maintained, as the vehicle will revert to manual steering mode, but will require greater driver effort. The sudden change in steering may increase the risk of a crash causing injury and/or property damage. Correction: Dealers will affect repairs as necessary. Note: This recall supersedes recalls 20110447 and 2012331. Vehicles having already been repaired under the previous campaigns do not require re-inspection.</p>		
Make	Model	Model Year(s) Affected
CHEVROLET	COBALT	2010
CHEVROLET	HHR	2009 2010
CHEVROLET	MALIBU	2004 2005 2006 2008 2009
CHEVROLET	MALIBU MAXX	2004 2005 2006
PONTIAC	G6	2005 2006 2008 2009
SATURN	AURA	2008 2009
SATURN	ION	2004 2005 2006 2007

24. Since July 10, 2009, when the “new” GM took over the “old” GM’s business, the “new” GM knew about the dangerous EPS defect. Since before 2005, for about 10 years, GMC knew about the dangerous EPS safety defect in the Vehicles. GM and GMC knew that:

- (a) the EPS performance in the Vehicles did not meet GM’s and GMC’s specifications and industry standards;
- (b) in some cases reported to them, the loss of electric power assist caused the drivers to lose control of their Vehicles, or be unable to manoeuvre them to the side of the road;
- (c) they had issued at least three separate service bulletins beginning in 2005 for power steering problems in some of the Vehicles, but did not issue a recall until March 2014;
- (d) they received numerous reports of sudden loss of EPS related to the defective EPS but they hid this safety information from the regulators, from their customers, the Class Members, and from the public; and
- (e) for some of the Vehicles, such as the Saturn Ion, NHTSA identified 4,787 complaints and 30,560 warranty claims related to loss of electric power assist while driving, resulting in a complaint rate of 14.3 incidents per thousand vehicles and a warranty claim rate of 9.1 percent.

25. 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 EPS 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 EPS defect;
- (c) they recalled some of the Vehicles, specifically the 2005-2010 Chevrolet Cobalt and the 2007-2010 Pontiac G5, on March 3, 2010, but these Vehicles were fixed with defective EPS parts;
- (d) they knew or ought to have known about the EPS defect and should have announced it to the public;
- (e) they designed, developed, tested, manufactured, assembled, distributed and sold a defective EPS;
- (f) they failed to warn the drivers, passengers and the public about the defective EPS until March 2014;
- (g) they failed to change the design, manufacture and assembly of the EPS in a reasonable and timely manner;
- (h) they failed to properly test the EPS;
- (i) they failed to establish any, or any adequate, procedures to ensure that the design of the EPS was adequate;

- (j) they failed to establish any, or any adequate, procedures for evaluating the design defects of the EPS;
- (k) they failed to properly instruct their employees to evaluate the injuries, deaths and accidents involving the EPS;
- (l) they failed to review and evaluate the accidents and complaints about the EPS and sudden loss of power steering;
- (m) they failed to initiate timely review, evaluation and investigation of the EPS 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 EPS;
- (o) they failed to implement a safety recall until March 2014;
- (p) they knew or ought have known that the Vehicles suffered from this design defect in the EPS;
- (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 there was a loss of electric power assist and risk of 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 March 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.

ADMISSION BY GM

26. Boyer is GM's vice president of GM Global Vehicle Safety. On March 31, 2014, Boyer stated that GM had not previously done enough to address the EPS defect: "With these safety recalls and lifetime warranties, we are going after every car that might have this problem, and we are going to make it right. We have recalled some of these vehicles before for the same issue and offered extended warranties on others, but we did not do enough."

27. Boyer's statement is an admission against the interest of "old" GM, "new" GM and GMC. It is an admission that GM and GMC were in breach of the standard of conduct (care) in manufacturing and maintaining the Vehicles. It is also an admission of a breach of the standard of conduct (care) in the safety aspects to the drivers and passengers in the Vehicles to the public in Canada and to the regulators in Canada.

GENERAL AND SPECIAL DAMAGES

28. As a result of the dangerous defect in the EPS in the Vehicles, and the failure by GM and GMC to disclose this safety issue about the EPS until March 31, 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 EPS.

29. The Class Members cannot get the EPS 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 EPS at no cost to the Class Members.

30. 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.

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

PUNITIVE DAMAGES

32. 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

33. The Plaintiffs plead and rely upon the provisions of the *CPA* and *CJA*.

PLACE OF TRIAL

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

SERVICE

35. 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)).

May 2, 2014

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Court File No. CV-14-20629C.P.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
WINDSOR

STATEMENT OF CLAIM

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