

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

TRILLIUM MOTOR WORLD LTD.

Plaintiff

- and -

**GENERAL MOTORS OF CANADA LIMITED and
CASSELS BROCK & BLACKWELL LLP**

Defendants

AND B E T W E E N:

GENERAL MOTORS OF CANADA LIMITED

Plaintiff by Counterclaim

and

TRILLIUM MOTOR WORLD LTD. and THOMAS L. HURDMAN

Defendants by Counterclaim

Proceeding under the *Class Proceedings Act, 1992*

Notice published under the *Class Proceedings Act, 1992*

**TO ALL FORMER GENERAL MOTORS DEALERS AND DEALER OPERATORS
THAT SIGNED A WIND-DOWN AGREEMENT IN OR AFTER MAY 2009**

A legal claim against the defendants and a counterclaim against the class have been certified as class proceedings by the Ontario Superior Court of Justice. The class action involves claims which, if proven, could entitle you to a monetary payment. The counterclaim involves claims, which, if proven, could make you liable for a monetary payment.

This Notice is published by court Order dated March 1, 2011. It addresses the following questions:

1. What is the lawsuit about?
2. Who is included in the lawsuit?
3. What issues will be decided at the common issues trial?
4. Must I do anything to “join” the lawsuit? How do I opt out of the lawsuit?

5. Can I sue GMCL or Cassels individually, or can GMCL sue me individually, if I opt out of the lawsuit?
6. Rescission of the Wind-Down Agreement
7. What happens if I did not rescind the Wind-Down Agreement?
8. GMCL's counterclaim
9. If the lawsuit is successful, how will damages be allocated to the class members?
10. If GMCL's counterclaim is successful, how will damages be assessed against the class members?
11. How will the lawyers be paid?

1. What is the lawsuit about?

The lawsuit is brought by Trillium Motor World Ltd. (“Trillium”), a former General Motors dealer in Scarborough, Ontario. Trillium signed the Wind-Down Agreement in May 2009. A copy of the statement of claim is available at: <http://www.sotosllp.com/class-actions/gm-dealers-claim/statement-of-claim/>.

Trillium alleges that General Motors of Canada Limited (“GMCL”) breached the *Arthur Wishart Act (Franchise Disclosure), 2000*, S.O. 2000, c. 3 (“*Wishart Act*”) and similar laws in Alberta and Prince Edward Island when it presented the Wind-Down Agreement to the dealers in May 2009.

Trillium seeks damages and compensation from GMCL on behalf of all dealers who signed the Wind-Down Agreement under sections 3 (duty of fair dealing), 4 (right of association), 6 (rescission) and 7 (misrepresentation and failure to disclose) of the *Wishart Act* and similar laws in Alberta and PEI. Trillium alleges that all dealers who signed the Wind-Down Agreement are entitled to assert claims under the *Wishart Act*. GMCL denies the allegations and intends to defend the lawsuit.

Trillium also alleges that the law firm of Cassels Brock & Blackwell LLP (“Cassels”) was retained to represent the dealers’ interests in the event of a restructuring of GMCL and that it failed to properly do so. Trillium claims damages from Cassels on behalf of the class for breach of contract, negligence and breach of fiduciary duties. Cassels also denies the allegations and intends to defend the lawsuit.

Trillium has retained the law firms of Sotos LLP (www.sotosllp.com) and WeirFoulds LLP (www.weirfoulds.com) to represent the class in the lawsuit (“class counsel”).

2. Who is included in the lawsuit?

This lawsuit and GMCL’s counterclaim have been certified as class proceedings by the court. Copies of the certification decision and the appeal decisions affirming the certification decision are available at <http://www.sotosllp.com/class-actions/gm-dealers-claim/> under “Documents.”

Cassels is seeking leave (permission) from the Ontario Court of Appeal to advance a further appeal from the certification decision. The Court will likely make its decision on Cassels’ application for leave at some point in the Summer of 2012.

As a result of the certification orders, and subject to Cassels' application for leave to appeal, this action and counterclaim will proceed on behalf of, and against, all corporations that signed the Wind-Down Agreement in or after May 2009 that do not opt out of the class action (the "class" or "class members"). The counterclaim will also proceed against all dealer operator(s) of corporations that signed the Wind-Down Agreement in or after May 2009 that do not opt out of the class action.

3. What issues will be addressed in the common issues trial?

The trial of the class action and counterclaim is known as the "common issues trial." At the common issues trial, the judge will decide all of the questions listed in Schedule A of this Notice, unless the judge decides that some or all of the issues cannot be decided on a common basis.

The judge who hears the common issues trial may also decide the amount of damages, if any, the defendants must pay to the class and/or the amount of damages, if any, class members must pay to GMCL. Refer to sections 8 and 9 below.

4. Must I do anything to "join" the class action? How do I opt out of the class action?

If you signed the Wind-Down Agreement, you are automatically included in the class action against GMCL and Cassels. You do not have to do anything to "join" the class action. If you remain in the class action, you will be bound by the court's decision in the common issues trial, whether favourable or not to the class.

If you do not wish to be included in the class action, you must fill out the opt-out coupon on page 7 of this Notice and send it to Sotos LLP or, alternatively, send Sotos LLP some other legible, written, signed request to opt out containing substantially the same information as the Opt-Out Coupon. The deadline for opting out is **August 6, 2012**. If your written request to opt out is not sent by that date, you will remain a member of the class.

If you opt out of the class action, you will not be affected by any decision the court makes on the common issues in the claim or in the counterclaim.

You may opt out of the class for the purpose of GMCL's counterclaim but remain a member of the class for the purpose of the class action. If you opt out of the class for the purpose of the counterclaim but remain a member of the class for the class action, GMCL may sue you individually, either in a separate lawsuit or by adding you as a party to the counterclaim.

5. Can I sue GMCL or Cassels individually, or can GMCL sue me individually, if I opt out of the lawsuit?

If you opt out of the class action, you will have the right to bring an action against GMCL and/or Cassels outside of the class action. However, you must bring any such claim within the appropriate limitation period, which may expire shortly. Any class member considering opting out of the class action and who wishes to bring an individual action against either GMCL or Cassels should consult its individual lawyer to determine the appropriate limitation period.

If you opt out of the counterclaim by GMCL but do not opt out of the class action, GMCL has the right to bring an action against you outside of the class action or to ask the court to add you as a defendant to the counterclaim.

6. Rescission of the Wind-Down Agreement

One of the issues in this lawsuit is whether GMCL was required under the *Wishart Act* or other similar legislation in Alberta and PEI to deliver to each class member a disclosure document at least 14 days before the class member signed the Wind-Down Agreement. As a result of the failure to deliver a disclosure document, the plaintiff asserts that class members have the right to rescind the Wind-Down Agreement.

In order to benefit from the rescission of the Wind-Down Agreement, the class member must have delivered to GMCL a written notice of rescission within two years of signing the Wind-Down Agreement. For most class members, the two year deadline expired on May 26, 2011. The validity of the notice of rescission will be determined at the common issues trial.

7. What happens if I did not rescind the Wind-Down Agreement?

If you did not rescind the Wind-Down Agreement or if the court determines that you do not have a valid right of rescission, you may still stand to benefit from the other claims asserted against GMCL if determined in favour of the class. These include claims under sections 3 (duty of fair dealing), 4 (right of association) and 7 (misrepresentation and failure to disclose) of the *Wishart Act* or similar provisions in the Alberta and PEI laws. In addition, you may stand to benefit from the claims asserted against Cassels if determined in favour of the class.

8. GMCL's Counterclaim

GMCL has brought a counterclaim against the class members and the dealer operators of the class members. A copy of GMCL's statement of defence and counterclaim is available at <http://www.sotosllp.com/class-actions/gm-dealers-claim/>. The counterclaim alleges that by remaining in the class action against GMCL, the class members are in breach of the Wind-Down Agreement. The counterclaim seeks to recover from any class member (corporation) that does not opt out of the class action against GMCL the amounts of the Wind-Down payments received by the class member corporations. The counterclaim also seeks to recover GMCL's costs, losses and damages resulting from the alleged breach of the Wind-Down Agreement by the class members that do not opt out of the class action against GMCL.

The class members (corporations) and the dealer operators (individuals) will be represented in the counterclaim by Trillium and Trillium's dealer principal, Thomas Lynton Hurdman, respectively.

The common issues raised by the counterclaim will be tried at the same time as the common issues raised by the class action. Until the court rules on the claim and counterclaim, no amounts are owing by any class member or dealer operator to GMCL in respect of the allegations made in the counterclaim.

9. If the lawsuit is successful, how will damages be allocated to the class members?

If the court finds in favour of the class, it could order GMCL or Cassels to pay a global or “aggregate” amount of damages to the class. If the court makes such an order, class counsel would then submit a proposal to the court for the allocation of the aggregate amount to the class members.

Class counsel will propose to the court a formula which is fair and objective and best approximates the losses suffered by each class member as a result of the alleged wrongs. The formula must be approved by the court before any amount is paid to a class member.

If either defendant agrees to settle the lawsuit by paying an aggregate amount of damages to the class, a similar process will be followed. Any settlement must be approved by the court. As part of the approval process, the court will determine the fairness and appropriateness of any allocation of settlement funds before any amount is distributed to the class.

If the court finds that liability cannot be determined without individual proceedings or that damages cannot be determined in an aggregate or global amount, these individual issues and/or damages will be determined in individual proceedings to take place after the common issues trial. Class members may be required to participate in such proceedings. If individual proceedings are necessary, class counsel agree to represent all class members at the individual proceedings as part of their contingency retainer. You should retain all of your business records for the dealer corporation until the end of this lawsuit.

10. If GMCL’s counterclaim is successful, how will damages be assessed against the class members?

If the court finds in favour of GMCL on GMCL’s counterclaim, it could order the class members to re-pay the amounts of their respective Wind-Down payments to GMCL and/or pay damages to GMCL.

If the court finds that amounts owing by the class members to GMCL cannot be determined without individual proceedings, these matters will be determined in individual proceedings to take place after the common issues trial. Class members may be required to participate in such proceedings. If individual proceedings are necessary, class counsel agree to represent all class members at the individual proceedings as part of their contingency retainer.

11. How will the lawyers be paid?

Class counsel will be paid legal fees only if the lawsuit is successful. The retainer agreement between Trillium and class counsel states that, subject to approval of the court, class counsel’s fee for the common issues trial, any individual hearings that may follow the common issues trial, and appeals therefrom shall be no more than 20% plus HST of all amounts recovered by the class or any class members as a result of the lawsuit plus all costs awarded by the court. The precise fee amount will be calculated with reference to the actual recovery in the lawsuit. Disbursements (i.e. out-of-pocket expenses) will be paid by the class members through voluntary contributions.

The retainer agreement and any fees charged by class counsel must be approved by the court.

For further information about the lawsuit you may contact:

- David Sterns (dsterns@sotosllp.com) or Allan D.J. Dick (adjdick@sotosllp.com) of Sotos LLP, Barristers and Solicitors, Suite 1250, 180 Dundas St. West, Toronto, ON M5G 1Z8 | T. 416.977.0007 | F. 416.977.0717 | www.sotosllp.com
- Michael Statham (mstatham@weirfoulds.com) or Marie-Andrée Vermette (mavermette@weirfoulds.com) of WeirFoulds LLP, Barristers and Solicitors, The Exchange Tower, 1600 - 130 King Street West, PO Box 480, Toronto, ON M5X 1J5 Canada | T. 416.365.1110 | F. 416.365.1876 | www.weirfoulds.com

The statement of claim and other court papers in this action are available for inspection at the Ontario Superior Court of Justice, 393 University Avenue, 10th Floor, Toronto, ON M5G 2J6 and on Sotos LLP's website at <http://www.sotosllp.com/class-actions/gm-dealers-claim/>.

PLEASE DO NOT CALL the Ontario Superior Court of Justice or the Registrar of the court. They will not be able to answer your questions about the lawsuit.

Date: June 7, 2012

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TRILLIUM MOTOR WORLD LTD. v. GENERAL MOTORS OF CANADA LIMITED
and CASSELS BROCK & BLACKWELL LLP

OPT OUT COUPON

TO: SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1250
Toronto, Ontario M5G 1Z8

Attention: David Sterns
Facsimile: (416) 977-0717

Name of Dealer: _____ (the "Dealer")

Name of Dealer Operator(s): _____ (the "Dealer Operator(s)")

This Opt Out Coupon only needs to be completed if the Dealer wishes to opt out of the class action against GMCL and Cassels OR if the Dealer and its Dealer Operator(s) wish to remain in the class action but opt out of the class for the purpose of defending GMCL's counterclaim.

The Dealer wishes to opt out of the class action against GMCL and Cassels, in which case the Dealer and its Dealer Operator(s) will be automatically excluded from the class for the purpose of defending GMCL's counterclaim.

OR

The Dealer and its Dealer Operator(s) wish to opt out of the class for the purpose of defending GMCL's counterclaim but remain in the class action against GMCL and Cassels.

To opt out, this coupon must be completed and sent to the above address by August 6, 2012.

Signed:

DEALER

DEALER OPERATOR

Name:

Title:

Name:

SCHEDULE 'A'

LIST OF COMMON ISSUES TO BE DECIDED AT THE COMMON ISSUES TRIAL

The following issues have been certified for the purpose of the action against GMCL and Cassels:

- (a) Is GMCL a franchisor within the meaning of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3 (the “*Wishart Act*”), the *Franchises Act*, R.S.A. 2000, c. F-23 (“*Alberta Act*”) and the *Franchises Act*, R.S.P.E.I. 1988, c. F-14.1 (“*PEI Act*”), or any of them;
- (b) Are all class members entitled to the benefit of the statutory duty of fair dealing under s. 3 of the *Wishart Act* and the right of association under s. 4 of the *Wishart Act* (or similar provisions under such franchise legislation otherwise governing any such class member) by virtue of the choice of law provisions in the standard General Motors Dealer Sales and Service Agreement and the Wind-Down Agreement;
- (c) If GMCL owed a duty of fair dealing to the class members, did GMCL breach this duty by:
 - (i) delivering the Wind-Down Agreements to the class members on or after May 20, 2009 and requiring acceptance of the Wind-Down Agreements by 6 p.m. EST on May 26, 2009;
 - (ii) not disclosing to the class members the identities of dealers offered a Wind-Down Agreement;
 - (iii) stating in the Notice of Non-Renewal and Wind-Down Agreement that GMCL “will not be renewing the Dealer Sales and Service Agreement” between GMCL and each of the class members at the expiry of its current term on October 31, 2010;
 - (iv) stating in the Wind-Down Agreement that “it has always been and continues to be [GMCL’s] position that the Acts are not applicable to the Dealer Agreement or the relations between GM and Dealer and/or Dealer Operator”;
 - (v) stating in the Notice of Non-Renewal, the Wind-Down Agreement and the May 19, 2009 HIDL broadcasts that GMCL’s offer of the Wind-Down Agreement was conditional upon all of the Non-Retained Dealers accepting the offer on or before May 26, 2009; or
 - (vi) breaching any terms of the Wind-Down Agreement;
- (d) Did GMCL have a duty to disclose material facts concerning its restructuring to franchisees at the time of soliciting the Wind-Down Agreement? If so, did it fail to disclose material facts and did it breach such duties?

- (e) If all class members had a statutory right to associate, did GMCL interfere with, prohibit, restrict, penalize, attempt to penalize or threaten to penalize the class members' exercise of this right by:
 - (i) delivering the Wind-Down Agreements to the class members on or after May 20, 2009 and requiring acceptance of the Wind-Down Agreements by 6 p.m. EST on May 26, 2009;
 - (ii) not disclosing to the class members the identities of dealers offered a Wind-Down Agreement;
 - (iii) stating in the Notice of Non-Renewal and Wind-Down Agreement that GMCL "will not be renewing the Dealer Sales and Service Agreement" between GMCL and each of the class members at the expiry of its current term on October 31, 2010;
 - (iv) stating in the Wind-Down Agreement that "it has always been and continues to be [GMCL's] position that the Acts are not applicable to the Dealer Agreement or the relations between GM and Dealer and/or Dealer Operator";
 - (v) stating in the Notice of Non-Renewal, the Wind-Down Agreement and the May 19, 2009 HIDL broadcasts that GMCL's offer of the Wind-Down Agreement was conditional upon all of the Non-Retained Dealers accepting the offer on or before May 26, 2009; or
 - (vi) any terms of the Wind-Down Agreement;
- (f) Are the waiver and release contained in s. 5 of the Wind-Down Agreement null, void and unenforceable in respect of the class members' rights under ss. 4 and 11 of the *Wishart Act* (or similar provisions under such franchise legislation otherwise governing any such class member);
- (g) Was GMCL required to deliver to each class member a disclosure document within the meaning of the *Wishart Act*, the Alberta Act and the PEI Act, as the case may be, at least fourteen days before the class member signed the Wind-Down Agreement;
- (h) By virtue of GMCL's failure to deliver any disclosure document:
 - (i) is each class member entitled to rescind the Wind-Down Agreement within two years of signing the Wind-Down Agreement; and
 - (ii) is each class member carrying on business in Alberta entitled to cancel the Wind-Down Agreement, within two years of signing the Wind-Down Agreement;
- (i) Is each class member which delivers to GMCL a notice of rescission or notice of cancellation, as the case may be, in respect of the Wind-Down Agreement within two years of signing the Wind-Down Agreement entitled to compensation under ss. 6(6) of the *Wishart Act* or the PEI Act or under s. 14(2) of the Alberta Act, as the case may be;

- (j) Did Cassels owe contractual duties to some or all of the class members and, if so, did Cassels breach those duties;
- (k) Did Cassels owe fiduciary duties as lawyers to some or all of the class members and, if so, did Cassels breach those duties;
- (l) Did Cassels owe duties of care to some or all of the class members and, if so, did Cassels breach those duties; and
- (m) What is the amount of pre-judgment and post-judgment interest applicable to any damages awarded?

The following issues have been certified for the purpose of GMCL's counterclaim:

- (a) Did each member of the Dealer Subclass breach section 5(c) of their respective Wind Down Agreements by commencing the Class Action and/or failing to opt out of the Class Action?
- (b) If the answer to issue (a) is yes, is each member of the Defendant Class liable to indemnify GMCL against all claims, losses, damages, the amount of the Wind Down Payment and expenses which may be imposed upon or incurred by GMCL arising from, relating to or caused by the Defendant Class Members' breaches of the Wind Down Agreements?
- (c) In the event that the release contained in section 5 of the Wind Down Agreement is void, which is denied by GMCL, have the Defendant Class members been unjustly enriched at the expense of GMCL and therefore liable to make restitution to GMCL for all or some of the Wind Down Payment to each of them?