CITATION: Trillium v. General Motors of Canada et al, 2012 ONSC 5960
COURT FILE NO.: CV-10- 397096
DATE: 20121116

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Trillium Motor World Ltd., Plaintiff

AND:

General Motors of Canada Limited and Cassels Brock & Blackwell LLP, Defendants

Proceeding under the *Class Action Proceedings Act, 1992*, S.O. 1992, c. 6

BEFORE: Justice E. P. Belobaba

COUNSEL: *For Trillium Motor World*: Bryan Finlay, David Sterns, Allan Dick, Marie-Andree Vermette and Michael Statham

For General Motors of Canada: David Morritt and Evan Thomas

For Cassels Brock & Blackwell: Peter Griffin and Rebecca Jones

For non-party Canadian Automobile Dealers Association: Paul Morrison and Eric Block

HEARD: October 16, 2012

RULE 30 PRODUCTION MOTIONS (PRIVILEGED DOCUMENTS)

[1] This matter was certified as a class action by Justice Strathy in 2011[1] and is now proceeding to a common issues trial. The common issues are set out in the Appendix.

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[1] *Trillium Motor World Ltd. v. General Motors of Canada Ltd.*, 2011 ONSC 1300, [2011] O.J. No. 889 ["Certification Reasons"], aff'd 2012 ONSC 463, 2012 O.J. No. 1578 (Div. Ct.) ["GMCL Appeal"]; 2012 ONSC 1443, 2012 O.J. No. 1579 (Div. Ct.) ["Cassels Brock Appeal"]. GMCL did not seek leave to appeal. Cassel Brock's motion for leave to appeal was dismissed on August 24, 2012 by the Court of Appeal.

[2] Justice Strathy certified nine common issues relating to Trillium's claims against GMCL (all dealing with provincial franchise law),[2] and three common issues relating to CBB (breach of contract, breach of fiduciary duty and negligence).[3]

[3] No damages issues were certified. Rather, the issue of damages was left to be determined by the common issues judge, either by ordering individual hearings on damages or by making an aggregate assessment of damages pursuant to s. 24 of the *Class Proceedings Act, 1992* ("CPA").[4]

[4] There are three motions before me in my capacity as the successor case management judge. All involve disputes over the non-production of documents on the grounds of solicitor-client privilege and/or relevance.

[5] The first motion, brought by Trillium Motor World ("Trillium") against Cassels, Brock & Blackwell ("CBB"), was argued but remains on hold while counsel work on a possible resolution. If no resolution is achieved, I will be pleased to release my decision. The second and third motions brought by General Motors of Canada Limited ("GMCL") and CBB against Trillium are the subject of this Endorsement.

[6] The factual background was set out in detail in the certification decision[5] and will not be repeated here. Put simply, this class action was commenced on behalf of some 207 GM Canada dealers whose dealerships were terminated by GMCL as a result of the financial crisis and "auto bailout" in the summer of 2009. The terminated dealers say that GMCL compelled them to sign Wind-Down Agreements ("WDAs") in breach of provincial franchise law and that CBB, the dealers' legal counsel, was negligent and breached fiduciary and contractual obligations in failing to provide appropriate advice. GMCL denies that it breached provincial franchise law and CBB denies that it was ever retained by the dealers. The latter dispute—whether CBB was retained by the dealers or by the dealers' association (the Canadian Automobile Dealers Association)—is the focus

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[2] Specifically, 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 and the *Franchises Act*, R.S.P.E.I. 1988, c. F-14.1.

[3] Common issue "m" applied to all defendants but has no bearing on these motions: "What is the amount of pre-judgment interest applicable to any damages award?"

[4] *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 24.

[5] Certification Reasons, *supra* note 1.

of the first motion which, as already noted, remains on hold. What follows is my decision on the second and third motions brought by GMCL and CBB.[6]

[7] For the reasons set out below, the GMCL and CBB motions are dismissed.

The nature of the two motions

[8] Both GMCL and CBB submit that the legal advice the plaintiff and dealers received from their individual lawyers when they signed the WDA is highly relevant to the core dispute between the parties.

[9] GMCL asks for an order that Trillium has improperly claimed privilege over communications with its lawyer Robert Hall and his firm, Loopstra Nixon LLP, and that Trillium produce those documents. In Schedule B to its affidavit of documents, Trillium lists one document, over which it asserts privilege, that relates to the legal advice it obtained from Mr. Hall in connection with the WDA. In addition, after delivering its affidavit of documents, Trillium produced a redacted copy of Mr. Hall's relevant docket entries. The redactions were made to preserve Trillium's privilege over the content of Mr. Hall's legal advice.

[10] CBB asks for an order that Trillium produce all documents relating to the obtaining of independent legal advice relating to the possible bankruptcy and/or restructuring of GMCL, relating to the WDA, and relating to "any other matters at issue in this action."

[11] Both GMCL and CBB have also asked for a similar order relating to all of the other class members. At the hearing of the motions, however, the latter request was withdrawn. The two motions proceeded solely with respect to Trillium.

Analysis

[12] There is no dispute about the applicable law, whether about solicitor-client privilege or relevance as it pertains to a common issues trial. The disagreement here about solicitor-client privilege is factual—whether the privilege was actually waived in this situation—and the disagreement about relevance, in essence, compels me to consider the content of the certified common issues, the certification reasons and my role as the successor case management judge.

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[6] I am grateful to counsel for providing me with electronic copies of their factums. I have borrowed liberally from these written submissions to expedite the release of this Endorsement.

[13] *First, solicitor-client privilege.* I agree with GMCL and CBB that solicitor-client privilege, at least with regard to legal advice received about the WDA, was expressly waived by Trillium during the course of its principal's cross-examination on his affidavit sworn in support of the certification motion. When asked about legal advice provided by his lawyer about the WDA, Trillium's counsel interjected and said this:

> MR. STERNS: I'll let the deponent answer the question, but it should be clear, because of the nature of this document and because of, you know, the issues raised in this case, I'll let him answer, *but other than for advice given in respect of this wind down agreement, we do not waive any solicitor-client privilege on behalf of Trillium or anyone else.* Did he explain the nature and effect of the wind down agreement to you?
>
> THE DEPONENT: Yes.
>
> [Emphasis added.]

[14] *Next, relevance.* Had this been an ordinary action rather than a class proceeding, I would have had no difficulty agreeing with GMCL and CBB that the legal advice that each dealer received about the WDA was relevant to such key issues as causation and damages, and given that solicitor-client privilege was explicitly waived, that all relevant documentation should now be produced. However, this is a class action. The next phase of the litigation is the common issues trial. Justice Strathy has carefully and deliberately certified thirteen issues. It is not my place as the successor case management judge to alter the common issues that were just certified. My choices are clear. If the individual legal advice received by each dealer is relevant to the common issues, then the motions will be granted. If not, then the motions must be dismissed, at least at this stage.[7]

[15] It is a well-settled principle that discovery prior to the common issues trial is generally limited to the certified common issues.[8] This principle also applies in the case where the common issues are bifurcated and tried before the individual issues.[9] The rationale for this was explained by this court as follows:

> In any proceeding the starting point to determine relevance is the pleadings. Relevance of course is the touchstone in determining whether or not a question is proper. A class proceeding, however, takes place in

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[7] The defendants are not precluded from raising these issues again, before the common issues trial judge.

[8] *Ramdath v. George Brown College of Applied Arts & Technology*, 2012 ONSC 2747, 2012 CarswellOnt 6834 at para. 27; *Axiom Plastics Inc. v. E.I. Dupont Canada Co.*, 2011 ONSC 4510, 2011 CarswellOnt 7387 at para. 3.

[9] *Abdulrahim v. Air France*, 2010 ONSC 3953, 2010 CarswellOnt 5320 at para. 13.

> two stages. Firstly there is a trial on the common issues. Thereafter a mechanism is established for resolution of the issues that have not been defined as common issues. Discovery of the representative plaintiffs at the present stage in the case before me is limited by the definition of common issues. In other words, the pleadings inform interpretation of the common issues and set out the facts to be relied upon but a question is only a proper question in this phase of the action if it relates to the common issues and not the individual claims. It is therefore the certification order as informed by the pleadings and not the pleadings at large that define relevance for the first phase of the trial.[10]

[16] For the purposes of discovery before the common issues trial, the pleadings do not define relevance. Rather, it is the common issues certified in the certification order that define relevance.

[17] I hasten to add that the principle that discovery in a class proceeding is limited to the common issues is not an absolute rule. In *Canadian Imperial Bank of Commerce v. Deloitte & Touche*,[11] Madam Justice Sanderson allowed discoveries to proceed in respect of not only the common issues but all issues raised by the pleadings. She allowed this because Justice Winkler, as he then was, in an earlier case conference, had expressly permitted the discovery to proceed on all issues raised by the pleadings. Justice Sanderson also found that restricting the defendant's discovery rights in the circumstances of that case would not substantially promote judicial economy.

[18] Here however, unlike *CIBC*, there has been no judicial indication that discovery would proceed on all issues as opposed to the common issues only. As I will explain in detail below, both Justice Strathy and the Divisional Court emphasized that the certified common issues can be determined based on the acts or omissions of the defendants, without inquiry into the particular circumstances of individual class members. Thus, the general principle that discovery before the common issues trial is limited to the common issues applies in this case.

[19] I will now turn to the GMCL and CBB motions.

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[10] *1176560 Ontario Ltd. v. Great Atlantic & Pacific Co. of Canada*, [2003] O.J. No. 5703 (Master) at paras. 6, 9. See also *Andersen v. St. Jude Medical Inc.*, [2006] O.J. No. 3659 (Master) at para. 26.

[11] [2008] O.J. No. 3304 (Sup. Ct.).

(1) The GMCL motion

[20] As already noted, the claims against GMCL are based entirely on the *Wishart Act* and comparable franchise legislation in other provinces. They include claims for: (i) breach of the duty of fair dealing under s. 3 of the Act; (ii) breach of GMCL's disclosure obligations under s. 5 of the Act; (iii) breach of the right of association under s. 4 of the Act; and (iv) a determination of whether the waiver and release in the WDA is null and void under s. 11 of the Act.

[21] These issues are the subject of common issues (c), (d), (e) and (f) as certified against GMCL and set out in the Appendix.

[22] Justice Strathy and the Divisional Court both held that the common issues certified as against GMCL are capable of determination at the common issues trial without reference to the state of mind or conduct of any particular class member. The focus of the common issues trial will be on GMCL's conduct and whether there were any breaches of GMCL's statutory obligations. This is evident from the language of the common issues and the findings of Justice Strathy on the certification motion and the Divisional Court on appeal.

[23] With respect to common issue (c), which sets forth Trillium's allegation of GMCL's breach of the statutory duty of fair dealing, Strathy J. found that the issue was an appropriate common issue because s. 3 of the *Wishart Act* "focuses on the conduct of the breaching party in the performance of the franchise agreement":

> As Winkler J. noted in *Salah v. Timothy's Coffees of the World Inc.*, above, s. 3 of the [Wishart Act] focuses on the conduct of the breaching party in the performance of the franchise agreement. I accept the submission of GMCL that there may be some breaches of the duty of fair dealing that require an examination of the conduct of the non-breaching party and that there may be cases where the issue cannot be resolved on a common basis. An open-ended question such as the one proposed by the plaintiff runs the risk of offending the principle that common issues should not be stated in overly broad terms. The issue can be addressed, in this case, by adopting GMCL's suggestion that the common issue should be made more precise by identifying the specific allegations of breach made by the plaintiff [this was done in paragraph 5(c) of the Certification Order]…

> These common issues are directed to specific questions concerning the conduct of GMCL that can be answered without reference to the actions of any particular class member.[12]

[24] Similarly, the certification judge found that common issue (d), which asks whether GMCL had a duty to disclose material facts concerning its restructuring to its franchisees at the time of soliciting the WDA and, if so, whether it breached such duties, was an appropriate common issue.[13] GMCL obtained leave to appeal on this issue. In dismissing the appeal, the Divisional Court specifically rejected GMCL's efforts to characterize Trillium's claim as a misrepresentation claim requiring evidence of individual reliance:

> The plaintiffs' claims are not based on negligent misrepresentation, by omission or otherwise. Rather, they assert a statutory cause of action based on alleged breaches of the AWA or comparable legislation in other provinces. To establish a breach of duty of fair dealing under s. 3 of the AWA a franchisee need not prove the elements required in an action for negligent misrepresentation, specifically reliance.[14]

[25] With respect to common issue (e), which deals with GMCL's alleged breach of the statutory right of association, the certification judge found as follows:

> Like the previous question, this question focuses entirely on the conduct of GMCL. The right of association is a collective right and must be inherently capable of collective assertion and enforcement. I accept the submission of GMCL that the common issue should identify the conduct of GMCL that is alleged to be a breach of the franchisees' right of association.[15]

[26] GMCL obtained leave to appeal on this issue. The Divisional Court then dismissed the appeal on the following basis:

> Like the claim based on breach of the duty of fair dealing under s. 3 of the AWA, this claim is also a statutory cause of action, rather than one founded on any common law duty. The legal framework and analysis parallels that noted above regarding s. 5(d).

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[13] Certification Reasons, *supra* note 1 at para. 114.

[14] GMCL Appeal, *supra* note 1 at paras. 22.

[15] Certification Reasons, *supra* note 1 at para. 115.

> GMCL is quite correct in its assertion that the effect of GMCL's conduct on individual class members will have to be examined at the damages or remedy stage, but on the question of GMCL's conduct, there is no need for individual inquiry. GMCL treated all its dealers in exactly the same way. Issue 5(e) is limited to an examination of GMCL's conduct and the specific determination of whether, and if so how, its conduct breached s. 4 of the AWA. Strathy J. makes this limitation clear in paragraph 115 of his reasons. [16]

[27] Finally, the certification judge found that common issue (f), which asks whether the release contained in the WDA violates s. 11 of the *Wishart Act* (and other provincial franchise legislation), was suitable for certification because "[t]his question addresses the legal consequences of a term of the WDA that is common to all class members. The question can be determined without reference to the conduct of any class member."[17]

[28] In refusing to grant GMCL leave to appeal on this issue, Justice Low said this:

> In *1518628 Ontario Inc. v. Tutor Time Learning Centres, LLC.*, [2006] O.J. No. 3011 (S.C.J.) aff'd (12 April 2007), Toronto 598/06 (Div. Ct.), Cumming J. held that s. 11 of the *Arthur Wishart Act* does not apply to a release given with advice of counsel by a franchisee in the settlement of a dispute for existing known breaches of the Act by the franchisor in respect of its disclosure obligations which would otherwise entitle the franchisee to rescission.
>
> It is conceivable that upon the facts as ultimately found at trial, s. 11 of the *Arthur Wishart Act* does not apply to the agreement. Given, however, that the members were all in the same position *vis-à-vis* GMCL at the time of the making of the offer and in the same position upon execution of the agreement, all having had the benefit of legal advice, there is, in my view, in the absence of a reply pleading by the plaintiff that the release is unenforceable for unconscionability … no analysis that requires an examination of the individual circumstances of the members of the class.
>
> I am therefore not persuaded that there is good reason to doubt the correctness of the motion judge's disposition on this issue … If it is found at trial that the agreement between the plaintiff and GMCL is, as a factual matter, a settlement as contemplated in *Tutor Time*, it is open to

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[16] GMCL Appeal, *supra* note 1 at paras. 30-31.

[17] Certification Reasons, *supra* note 1 at para. 124.

> GMCL to argue that the reasoning there should equally apply in this case.[18]

[29] Thus, independent legal advice received by Trillium is not relevant to the determination of any of the common issues.

[30] GMCL's additional argument that the legal advice provided by Mr. Hall to Trillium is relevant to the issue of the determination of damages flowing from breaches of the *Wishart Act* is met by the fact that the certification judge declined to certify damages as a common issue. Instead, Justice Strathy left it to the common issues trial judge to determine whether individual hearings would be necessary or whether damages could be assessed in the aggregate.[19]

[31] In sum, the individual legal advice received by Trillium and the other class members is not relevant to any of the common issues certified against GMCL. Thus, there is no basis on which to order disclosure of this advice at this stage of the proceeding.

(2) The CBB motion

[32] The claims against CBB are for breach of contract, breach of fiduciary duty and negligence. The plaintiff says that CBB, through its conduct, squandered the only opportunity that the dealer group had to act and be represented as a collective in negotiating the terms of the WDA.

[33] In certifying the common issues, Justice Strathy described the essence of the plaintiff's claim as follows and explained why the individual motivations of class members were "irrelevant." The comment about "alleged conflict" refers to the fact that CBB had acted for the federal government in related auto industry matters.[20]

> Trillium pleads that Cassels failed to properly advise and represent class members – in particular, by failing to inform them of their rights under the A.W.A. and by failing to properly represent them in developing a collective response to the W.D.A. Trillium alleges that by failing to disclose its alleged conflict, and by failing to refer class members to an independent lawyer who could inform them of their rights and properly represent their interests in a collective response to GMCL's ultimatum,

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[18] GMCL Appeal, *supra*, note 1, at paras. 30 and 31.

[19] Certification Reasons, *supra* note 1 at paras. 120, 128, 169.

[20] *Ibid*. at paras. 24, 26, 158.

> Cassels deprived all class members of the opportunity to use their group negotiating power to full advantage. Trillium's theory is that the dealers could have used their combined leverage to negotiate a better deal with GMCL by refusing to agree to the voluntary downsizing unless their compensation was increased. Instead, says the plaintiff, Cassels told them to obtain advice from their own lawyers, which – in view of GMCL's position that the W.D.A. was non-negotiable – meant that there was no possibility of an effective response on an individual basis. […]
>
> The plaintiff will say that it is irrelevant that all dealers obtained independent legal advice before signing the W.D.A. and that some would have signed the W.D.A. in any event or returned it early. The plaintiff's case is that all dealers had a chance, through Cassels, to obtain a better deal and that due to Cassels' breaches of duty they lost that chance […]
>
> [A]s I have observed earlier, in focusing on the decision of each individual class member to sign the W.D.A., Cassels fails to join issue with the claim as framed by the plaintiff. The plaintiff does not say to Cassels: "If you had properly represented me, I would not have signed the W.D.A." On the contrary, the plaintiff puts his case against Cassels on the following basis:
>
> > If you had properly advised me and all your other clients, you would have told us that we had inalienable rights under the A.W.A. and you would have recommended that we use those rights and our bargaining power, as a potential spoiler of GMCL's bail-out, to negotiate a better deal with GMCL. By doing nothing because of your undisclosed conflict of interest, you deprived us of our only chance to negotiate a better deal and instead recommended that we speak to our individual lawyers, knowing that this would make it impossible for us to act collectively.
>
> Framing the claim in this fashion, as the plaintiff has every right to do, the individual motivations of class members are irrelevant.[21]

[34] The legal advice received by Trillium and the other class members from their respective lawyers is not relevant to common issues (j), (k) and (l). I agree with Trillium that CBB will be the focus of the legal and factual inquiries that will have to be made at the common issues trial, not the class members and not their individual lawyers. The certification judge made this clear:

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[21] *Ibid*. at paras. 26, 139, 157-58.

> The determination of whether Cassels owed a contractual duty, a fiduciary duty or a duty of care to the class can be made without considering the particular circumstances of individual class members. The same is true of the question whether Cassels breached those duties. There is no evidence that Cassels had dealings with individual class members that would make the answers to these questions dependent on individual communications or circumstances.[22]

[35] In sum, the content of the legal advice received by Trillium and the other class members from their respective lawyers is irrelevant to the common issues as certified by Justice Strathy. There is no basis upon which CBB can compel disclosure of that advice at this stage of the proceeding.

Disposition

[36] The motions brought by GMCL and Cassels Brock & Blackwell are therefore dismissed.

[37] If the parties are unable to agree on costs, I would be pleased to receive brief submissions from Trillium within fourteen days and from GMCL and CBB within ten days thereafter.

[38] My thanks to all counsel for their co-operation and assistance.

Belobaba J.

Date: November 16, 2012

[22] *Ibid.*, at paras. 135, 138-139. See also Cassels Brock Appeal, *supra* note 1 at paras. 15-18.

APPENDIX: THE CERTIFIED COMMON ISSUES

GMCL

(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.

CBB

(j) Did Cassels Brock & Blackwell LLP ("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.

(m) What is the amount of pre-judgment and post-judgment interest applicable to any damages awarded?

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