AMENDED THIS June 17/14 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

☐ RULE/LA RÈGLE 26.02 (_____)

☑ THE ORDER OF Justice Belobaba
L'ORDONNANCE DU
DATED / FAIT LE June 16th 2014

REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No.: CV-10-397096CP

SUPERIOR COURT OF JUSTICE

BETWEEN:

TRILLIUM MOTOR WORLD LTD.

Plaintiff

- and -

GENERAL MOTORS OF CANADA LIMITED and CASSELS BROCK & BLACKWELL LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

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 plaintiff does not have a lawyer, serve it on the plaintiff, 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.

Date: February 12, 2010

Issued by: "S. Caffi"
Local Registrar

First Amendment: April 29, 2011

Second Amendment: _____, 2014

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

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

AND TO: **CASSELS BROCK & BLACKWELL LLP**
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

CLAIM

1. The plaintiff claims against the defendant General Motors of Canada Limited ("GM"):

(a) a declaration that GM is 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");

(b) a declaration that the class members are entitled to the benefit of the statutory duty of fair dealing under s. 3 and the right of association under s. 4 of the Wishart Act by virtue of the choice of law provisions in the standard General Motors Dealer Sales and Service Agreement ("Dealer Agreement") and the Wind-Down Agreement as defined herein (or similar provisions under such franchise legislation otherwise governing any such class members), and that GM breached such provisions;

(c) damages under s. 3(2) and s. 4(5) of the Wishart Act (or similar provisions under such franchise legislation otherwise governing any such class members), in an aggregate amount to be proven, not exceeding $750,000,000, or, alternatively, an order under s. 25 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("CPA") directing individual hearings in respect of such damages;

(d) a declaration that any waiver or release contained in the Wind-Down Agreement is 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 members);

(e) a declaration that the amounts paid by GM under the Wind-Down Agreement are to be credited against each class member's damages under s. 3(2) and s. 4(5) of the Wishart Act (or similar provisions under such franchise legislation otherwise governing any such class members);

(f) a declaration that GM was required to deliver to each class member ~~carrying on business in Ontario, Alberta and PEI~~ 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;

(g) a declaration that within two years of signing the Wind-Down Agreement ~~by failing to deliver a disclosure document~~:

(i) each class member whose Dealer Agreement was governed by the laws of Ontario is entitled under the Wishart Act to rescind the Wind-Down Agreement;

(ii) further and in any event, each class member in Ontario and PEI is entitled under the Wishart Act or the PEI Act, as the case may be, to rescind the Wind-Down Agreement; and

(iii) each class member in Alberta is entitled under the Alberta Act to cancel the Wind-Down Agreement~~, within two years of signing the Wind-Down Agreement~~;

(h) a declaration that upon delivering to GM a notice of rescission under the Wishart Act or PEI Act, or a notice of cancellation under the Alberta Act, in respect of the Wind-Down Agreement within two years of signing the Wind-

Down Agreement, the Wind-Down Agreement signed by each such rescinding or cancelling class member is thereby rendered null and void;

(i) a declaration that each class member ~~in Ontario and PEI~~ which delivers to GM a notice of rescission in respect of the Wind-Down Agreement within two years of signing the Wind-Down Agreement is entitled to compensation under s. 6(6) of the Wishart Act or the PEI Act, as the case may be, and that each class member in Alberta which delivers to GM a notice of cancellation in respect of the Wind-Down Agreement within two years of signing the Wind-Down Agreement is entitled to compensation under s. 14(2) of the Alberta Act;

(j) a declaration that each class member ~~in Ontario and PEI~~ is entitled to damages under s. 7(1) of the Wishart Act or the PEI Act, as the case may be, by reason of GM's failure to comply with s. 5 of the Wishart Act or the PEI Act, as the case may be, in respect of the Wind-Down Agreement;

(k) an order pursuant to s. 25 of the CPA directing individual hearings in respect of the compensation or damages of each class member ~~in Ontario, Alberta and PEI~~ under s. 6(6) or 7(1) of the Wishart Act or the PEI Act or under s. 14(2) of the Alberta Act, as the case may be, and directions pursuant to s. 25(2) of the CPA with respect to the manner in which such compensation or damages is to be calculated in such individual hearings; and

(l) a declaration that amounts paid by GM to each class member ~~in Ontario, Alberta and PEI~~ under the Wind-Down Agreement are to be credited against the class member's damages or compensation under s. 6(6) or s. 7(1) of the Wishart Act or the PEI Act, or under s. 14(2) of the Alberta Act, as the case may be.

2. The plaintiff claims against the defendant Cassels Brock & Blackwell LLP ("Cassels"):

(a) a declaration that Cassels owed contractual duties as described herein to class members and that it breached those duties;

(b) a declaration that Cassels owed fiduciary duties as lawyers as described herein to class members and that it breached those duties;

(c) a declaration that Cassels owed duties of care as described herein to class members and that it breached those duties;

(d) damages in an amount to be proven, not exceeding $750,000,000, in respect of all class members' losses and damages caused by or contributed to by Cassels' breach of contract, breach of fiduciary duties and negligence; and

(e) punitive, exemplary and aggravated damages in the amount of $20,000,000;

3. The plaintiff claims severally against all defendants:

(a) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

(b) costs of this action on a substantial-indemnity scale, plus applicable goods and services and harmonized sales taxes; and

(c) such further and other relief as this Honourable Court deems just, including all further necessary or appropriate accounts, inquiries and directions.

The parties

4. The plaintiff, Trillium Motor World Ltd. (formerly, Trillium Pontiac Buick GMC Ltd.) ("Trillium"), is incorporated under the laws of Canada. Trillium carried on business in the City of Toronto in the province of Ontario from 1989 to 2009 as an automotive dealer under a Dealer ~~Sales and Service~~ Agreement ~~("Dealer Agreement")~~ with GM.

5. GM is incorporated under the laws of Canada and has its head office in the City of Oshawa, Ontario. GM carries on business throughout Canada as a manufacturer and distributor of automobiles, and as a franchisor of automobile dealership franchises. GM's franchisees are referred to herein as "dealers".

6. Cassels is an Ontario limited liability partnership formed or continued under the *Partnership Act*, R.S.O. 1990, c. P.5.

7. The plaintiff is a member of, and brings this action on behalf of, the following proposed class:

> All corporations in Canada which signed a Wind-Down Agreement with GM dated May 20, 2009 (the "Class").

8. There are approximately 215 members of the Class.

GM seeks to terminate class members' rights

9. On or around May 20, 2009, GM sent a letter by email to approximately 240 GM dealers across Canada (the "affected dealers") informing them that, due to the financial pressure that GM and its U.S. parent corporation ("GMUS") were under, GM needed to restructure its dealership network. The restructuring involved the premature termination of the affected dealers' rights under their respective Dealer Agreements. The Dealer

Agreements were standard form agreements drafted by GM. Each Dealer Agreement contained a term which was to expire on October 31, 2010 and granted a right of renewal to the dealer thereafter.

10. GM had no right under the Dealer Agreement to unilaterally terminate any of the affected dealers' Dealer Agreements. Accordingly, GM offered the affected dealers a time-limited offer of compensation (the "Wind-Down payments") contained in an agreement entitled "Wind-Down Agreement" which was attached to GM's May 20, 2009 letter ("WDA"). The Wind-Down payments would be made in exchange for the premature surrender of the affected dealers' rights under their Dealer Agreements, including the rights of renewal and termination assistance rights therein, and required that a number of conditions be met, including the signing of a full waiver and release by the affected dealers of their rights to sue GM or its affiliates.

11. The WDA required the affected dealers to continue operating their dealerships until December 31, 2009, or some other date that GM approved, which would be no later than October 31, 2010. The WDA imposed a substantially different franchise relationship between the parties for the remaining period of the affected dealer's operation.

12. The Wind-Down payments were composed of two parts: a per-unit payment and a sign removal allowance. The Wind-Down payments were to be made to the affected dealers in July, September and November 2009, with the final payment being made 90 days after the termination date, assuming all conditions were met.

13. The affected dealers were required to accept the offer and execute and deliver their WDA to GM on or before 6:00 PM on May 26, 2009.

14. In the letter accompanying the WDA, and on a national conference call convened by GM on May 19, 2009 (the "GM dealer conference call"), GM advised the affected dealers that if all affected dealers did not sign the WDA by the deadline, there was a "strong possibility" that GM would file for reorganization under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 ("CCAA"). The implication was that the affected dealers' Dealer Agreements would be terminated in the CCAA proceeding, leaving them with little or nothing.

15. The Wind-Down payments were subject to a number of conditions. One of those conditions was that the affected dealer was to have sold to a customer or to another GM dealer 25% of its new motor vehicle inventory by the time of GM's second payment, and a further 20% of its inventory by the third payment date. The affected dealer was to have sold its entire inventory, removed all signs, ceased all business operations and complied with all post-termination obligations in order to receive its final payment.

16. It was a further term of the WDA that GM had the option to terminate the WDA or to cease making payments under it if the affected dealer breached any of the terms of the WDA or its Dealer Agreement.

17. The Wind-Down payments were calculated using a single formula for all affected dealers, based on the number of vehicles sold by the affected dealer over the previous year as well as a fixed amount to remove GM signage. Although the formula was the same for all affected dealers, the per unit price paid differed according to whether the affected dealer was in or near a metropolitan area. In many cases, as known to GM, the Wind-Down payments were not even enough to cover the affected dealer's employee severance obligations and other costs which would remain owing by the affected dealer.

As was also known to GM, many of the affected dealers or their related companies would be left with multi-million dollar, single-purpose buildings, some of which had recently been purchased or developed at great cost.

18. Although the letter sent to each affected dealer with the WDA was dated May 20, 2009, most dealers did not receive it until May 21, 2009 and some did not receive it until as late as Friday, May 22, 2009 leaving all affected dealers just two to four business days to make the crucial and difficult decision whether or not to enter into the WDA.

19. In order to accept the WDA, the affected dealer was required to obtain a certificate of independent legal advice, signed by a lawyer, attesting that the affected dealer entered into the WDA "voluntarily and with a full understanding of the implications".

20. Facing intense pressure, and for reasons more fully described below, 90% of the affected dealers signed the WDA before the expiry of the 6:00 PM deadline on May 26, 2009.

21. Despite the fact that all affected dealers did not sign the WDA, GM waived the condition of 100% take up of the WDA. GM did not make a formal insolvency filing; it did not offer any of the affected dealers which signed the WDA the option of rescinding the WDA.

22. The affected dealers which did not sign the WDA continue to operate as GM dealers and their rights are not affected. Those affected dealers are not part of the Class.

GM acted unlawfully in presenting the WDA to the affected dealers ~~in Ontario, Alberta and PEI~~

23. GM did not comply with the mandatory pre-contractual disclosure provisions under s. 5 of the Wishart Act, s. 4 of the Alberta Act and s. 5 of the PEI Act when it presented the WDA to the class members. ~~carrying on business in Ontario, Alberta and PEI, respectively.~~

24. The Wishart Act, the Alberta Act and the PEI Act protect franchisees by requiring a franchisor to provide franchisees with a statutorily prescribed disclosure document at least 14 days before a franchisee can be required to sign any agreement that relates to a franchise.

25. The disclosure obligations under the Wishart Act, the Alberta Act and the PEI Act apply to all franchise relationships in which the franchisee carries on business in Ontario, Alberta or PEI, respectively. By virtue of the governing law provision of the Dealer Agreement, the Wishart Act also applies to all dealers.

26. The disclosure document must contain complete and truthful information, supported by a certificate signed by two of the franchisor's officers. The purpose of the disclosure document is to ensure that a franchisee can decide whether to enter into the proposed agreement without undue time pressure, veiled threats or unwritten promises.

27. The class members ~~carrying on business in Ontario, Alberta and PEI~~ were entitled to the protection of the pre-contractual disclosure provisions under s. 5 of the Wishart Act, s. 4 of the Alberta Act and s. 5 of the PEI Act ~~respectively~~, as the case may be, before signing the WDA.

28. The disclosure obligation was triggered by GM's request that the affected dealers enter into the WDA.

29. GM is "a franchisor" within the meaning of s. 1(1) of the Wishart Act, the Alberta Act and the PEI Act.

30. The WDA is a "franchise agreement" or an "agreement that relates to a franchise" within the meaning of s. 1(1) and s. 5(1)(a) of the Wishart Act and the PEI Act, and s. 1(1) and s. 4(2)(a) of the Alberta Act.

31. The affected dealers were "prospective franchisees" in respect of the WDA within the meaning of s. 1(1) and s. 5(1) of the Wishart Act and the PEI Act, and s. 4(2)(a) of the Alberta Act.

32. GM was obliged under s. 5 of the Wishart Act and the PEI Act and s. 4 of the Alberta Act to give the class members ~~carrying on business in Ontario, Alberta and PEI~~ a disclosure document and a 14 day cooling-off period before requiring them to sign the WDA. GM failed to do so.

33. Pursuant to s. 6 of the Wishart Act and PEI Act, and s. 14(2) of the Alberta Act, a franchisee which does not receive a disclosure document as required by the respective Acts has two years to rescind or cancel the agreement which it entered into relating to the franchise. A franchisee which rescinds or cancels an agreement under s. 6 of the Wishart Act and PEI Act and s. 14(2) of the Alberta Act is entitled to compensation from the franchisor under these provisions.

34. Pursuant to s. 7 of the Wishart Act and PEI Act, a franchisee has a right of action for damages against the franchisor if the franchisee suffers a loss as a result of the franchisor's failure to comply in any way with s. 5 of the Wishart Act and PEI Act.

35. The class members ~~carrying on business in Ontario, Alberta and PEI~~ therefore seek the declarations described in paragraph 1(f) to (l) above.

GM breached the duty of fair dealing and right of association under franchise statutes

36. GM began preparing for its restructuring many months before May 20, 2009. It knew by March 30, 2009 at the latest that part of its plan would involve a reduction of its dealership network. ~~At or around that time and continuously thereafter, the Governments of Canada and Ontario had imposed upon GM a term that in order to be eligible to receive extraordinarily large government financial assistance packages (the "GM auto bailout") which they were prepared to make available to GM, GM would be required to reduce the number of dealers in the franchise system.~~

37. GM stated publicly at the latest on or about April 27, 2009 that it intended to reduce its dealership network by approximately 42%. GM further stated its desire to carry out this reduction of its dealership network outside of a formal insolvency proceeding. GM knew well before May 20, 2009 that in order to achieve this goal, a wind-down package would have to be sent to the affected dealers.

38. GM deliberately waited until May 20, 2009 to deliver the WDA to the affected dealers in order to maximize the impact and pressure on the affected dealers and give them as little chance as possible to obtain adequate advice and representation to attempt to negotiate the terms of, and payments under, the WDA. GM also told the affected dealers that the terms and conditions outlined in the WDA were not subject to negotiation.

39. GM knew that many of the affected dealers had been GM dealers for decades, and in some cases, generations. Many employed large numbers of people and had been pillars in their communities. GM knew that the affected dealers would be extremely dismayed by the sudden news that they were facing a loss of this magnitude. Instead of using this knowledge to give the dealers a reasonable amount of time to respond to the WDA, GM opted to employ a "shock and awe" strategy giving the affected dealers no more than a few days to come to grips with what they were facing, organize themselves and obtain effective legal representation on the WDA.

40. GM and its advisers knew of their statutory obligations to deliver a disclosure document to the class members ~~carrying on business in Ontario, Alberta and PEI~~ fourteen days before they signed the WDA and knew that common law and statutory duties of good faith and fair dealing required GM to give all of the class members a reasonable amount of time to review, obtain proper advice on, and potentially collectively negotiate an agreement of the magnitude and novelty of the WDA. GM deliberately avoided doing so in order to gain maximum advantage of the crisis situation which presented itself.

41. GM was also aware that the affected dealers were represented by Cassels and that Cassels had a palpable and overriding conflict of interest (as pleaded below) which would prevent it from vigorously and capably representing the affected dealers. In addition to being the firm pre-selected to represent the GM dealers in a restructuring, Cassels represented the Government of Canada ("Canada"), ~~on the GM auto bailout. Canada was the very party which had insisted on the dealership reduction and which was advancing the majority of the bailout funds.~~ one of the Governments that would grant billions of dollars in bailout funds to GM (the "GM auto bailout") based on GM's viability plan which included a planned reduction of GM's dealership network by 42% and which was

approved by Canada, among others. GM knew that this conflict had not been disclosed to the affected dealers and that the affected dealers would be abandoned by Cassels after the WDA was sent to them on or after May 20, 2009. This, as is pleaded below, is precisely what happened.

42. GM knew at all material times that the affected dealers would not have the time or the ability to organize a collective response to the WDA without Cassels' assistance. GM also knew that the affected dealers did not know which of the dealers in its franchise system had received the WDA. GM denied the affected dealers access to this information in order to further prevent them from attempting to associate throughout the period following May 20, 2009.

43. In addition, GM intentionally misled the affected dealers in its letter dated May 20, 2009, on the GM dealer conference call which preceded it, and in the WDA itself, in the following respects:

(a) the letter and WDA falsely asserted that GM had the unilateral right not to renew the affected dealers' Dealer Agreements at the expiry of the then current term on October 31, 2010. In fact, the standard form Dealer Agreement to which each affected dealer was a party gave the affected dealers the right to renew for a further five years provided they were in good standing. GM did this to create the false impression that the affected dealers were giving up less than 1½ years of the remaining term under their Dealer Agreements, when in fact they were giving up much more;

(b) the WDA asserted that GM was not a "franchisor" and therefore was not bound by the Wishart Act, the Alberta Act and the PEI Act (collectively, the

"Franchise Acts"). This was false and misleading and known to be such by GM. GM was fully aware that it was a franchisor within the meaning of each of the Franchise Acts;

(c) the WDA nevertheless purported to waive and release GM of and from all liability under the Franchise Acts, despite the fact that each of the Franchise Acts contains specific statutory prohibitions against such waivers and releases;

(d) the WDA purported to penalize the affected dealers if they initiated a court proceeding for, among other things, a determination of their rights under the Franchise Acts;

(e) the WDA purported to penalize the affected dealers if they disclosed the terms or conditions of the WDA or any facts relating thereto to third parties, including to other affected dealers. This constituted a breach of the affected dealers' statutory rights of association under the Franchise Acts; ~~and~~

(f) the letter and WDA stated that unless all of the affected dealers accepted the offer by the 6:00 PM deadline on May 26, 2009, the offer would be rescinded. This statement, together with statements made by GM on the GM dealer conference call (such as the statement that there was a strong possibility that GM would file under the CCAA if all affected dealers did not accept the WDA), was intended to lead the affected dealers to believe that the refusal of any affected dealer to sign the WDA would cause GM to file for bankruptcy protection at great loss to the affected dealers. This was knowingly false and did not reflect GM's true intention at the time that it sent the WDA; and

(g) GM failed to disclose to the affected dealers that as of May 20, 2009, it intended to offer the affected dealers an agreement which was nearly identical to the WDA (which GM referred to as the "Plan B WDA") even if it filed for CCAA protection. Most significantly, it was GM's intention to offer to any affected dealer which did not sign the WDA by the May 26 deadline an additional seven days from June 1 to accept the Plan B WDA while under CCAA protection. This was GM's intention up to May 26, 2009 and beyond.

44. By ~~making these statements~~ the above conduct, which GM knew to be false and misleading, and by intentionally delaying the sending of the WDA to the affected dealers until May 20, 2009 (or later in the case of some affected dealers), GM sought to take unfair and unlawful advantage of the affected dealers' vulnerability.

44A. In addition to the above conduct, GM also intentionally misled the affected dealers when it advised them that it would not negotiate the terms of the WDA. This was false and misleading, just as GMCL's statements to the effect that it would file under the CCAA if all affected dealers did not sign the WDA were false and misleading.

44B. While GM, GMUS, and the U.S., Canadian and Ontario Governments ("Governments") knew that GMUS, as part of its restructuring, would file for bankruptcy in the U.S., they wanted GM to avoid a filing under the CCAA if at all possible. The reasons for this included, but were not limited to, the following:

(a) **The "Considerable Execution Risk":** A CCAA filing in Canada could have delayed the expeditious exit of GMUS from the bankruptcy process

in the U.S. If GMUS was going to continue as a viable company, it was essential that it exit from bankruptcy quickly;

(b) **Net Operating Losses**: GM could lose highly valuable net operating losses ("**NOLs**"), estimated to be worth approximately CAD $5.5 to $6 billion, if it filed under the CCAA in Canada;

(c) **Tax Refund:** GM expected to receive a large cash tax refund from the Canada Revenue Agency (the "**Tax Refund**"). In May 2009, the management of GM estimated the amount of the Tax Refund to be approximately CAD $1.6 billion, $1.1 billion of which was earmarked for GMUS. There were concerns that a CCAA proceeding would impair GM's ability to transfer this amount to GMUS;

(d) **CAMI Financing Default:** A CCAA filing by GM could constitute an event of default of a loan in the amount of CAD $500 million that had been made to CAMI, a joint venture between GM and Suzuki;

(e) **Harm to Supply Base:** Severe damages to the Canadian supply base may have resulted from a GM filing under the CCAA;

(f) **Harm to the Canadian Stakeholders:** A CCAA filing by GM may have had a significant adverse impact on the Canadian stakeholders (e.g. employees, people entitled to benefits, customer base); and

(g) **Expenses:** A Canadian bankruptcy would impose significant expenses (e.g., professional fees).

44C. In order to avoid a CCAA filing in Canada, the Governments were prepared to allocate cash, which otherwise would fund the restructuring of GMUS and GM.

44D. That GM would have negotiated with the affected dealers if they had presented a collective front is clear from the fact that GM did negotiate successful settlements with the Canadian Auto Workers ("CAW") and a group known as the Nova Scotia bondholders, i.e. the other two stakeholder groups, in addition to the affected dealers, whose agreement GM maintained was essential to avoiding a CCAA filing. GM negotiated with the Nova Scotia bondholders up until the successful conclusion of an agreement in the early morning of June 1, 2009, the day of the bankruptcy court filing in the U.S. and the anticipated date of a CCAA filing. The negotiated agreement was significantly more favourable to the bondholders than what GM and GMUS had been initially willing to pay to avoid a filing under the CCAA.

45. Section 3 of the Wishart Act imposes a duty of fair dealing on parties to a franchise agreement in the performance and enforcement of the franchise agreement. The facts pleaded in the preceding paragraphs constitute a breach of the duty of fair dealing.

46. Further, s. 4 of the Wishart Act gives the affected dealers the right to associate with each other for any purpose. Section 4 of the Wishart Act prevents franchisors from interfering with, prohibiting or restricting franchisees from ~~exeercising~~ exercising the right to associate. GM's conduct, as particularized in the preceding paragraphs, constitutes a breach of the right of association.

47. Both the WDA and the Dealer Agreement stipulate that Ontario law applies to the relationship between GM and its dealers. By virtue of these choice-of-law provisions, the affected dealers in all provinces are entitled to fair dealing protection and to the right of association under the Wishart Act.

48. The class members in all provinces are entitled to damages against GM for breach of the duty of fair dealing under s. 3(2) and interference with the right of association under s. 4(5) of the Wishart Act.

49. The Franchise Acts in Alberta and PEI contain similar fair dealing and right of association provisions which cannot be waived by franchisees carrying on business in those provinces. In addition to any rights which an affected dealer may otherwise be entitled to assert under its province's Franchise Act, each affected dealer is entitled to the protection of ss. 3 and 4 of the Wishart Act by virtue of the choice-of-law provisions of the WDA and the Dealer Agreement. In the alternative, each affected dealer in Ontario, Alberta and Prince Edward Island pleads and relies on the fair dealing and right of association provisions in their respective province's Franchise Acts.

Release contained in WDA void

50. The WDA contains a comprehensive release and waiver of rights by the affected dealers in favour of GM. It states that the affected dealers waive and release all of their rights under the Dealer Agreement and the law. Although the WDA states that the Franchise Acts do not apply to the relationship between GM and its dealers (which statement itself was knowingly false and therefore a breach of the duty of fair dealing), it further states that if they do apply, the affected dealers waive all rights under the Franchise Acts.

51. The release and waiver of rights is void under ss. 4 and 11 of the Wishart Act which apply to all affected dealers by virtue of the choice-of-law provisions referred to above. In the alternative, each affected dealer in Ontario, Alberta and Prince Edward Island pleads and relies on the corresponding provisions in their respective province's Franchise Acts.

51A. Further and in the alternative, as pleaded in paragraphs 36 to 49 hereof, the WDA was obtained through a breach of the duty of fair dealing and the right of association in ss. 3 and 4 of the Wishart Act and the corresponding sections in the other Franchise Acts. Accordingly, the release and waiver of rights provision contained in the WDA is null and void and unenforceable.

52. In addition, any release or waiver in the WDAs signed by the class members ~~carrying on business in Ontario, Alberta and PEI~~ is null and void in its entirety if the WDA is rescinded or cancelled in accordance with ~~their respective~~ the applicable Franchise Act.

53. The class members seek a declaration that the release and waiver contained in the WDA is null, void and unenforceable with respect to all claims, including those under the Franchise Acts.

Summary of claims against GM

54. In summary:

(a) The class members claim damages against GM for breach of the duty of fair dealing under s. 3(2) of the Wishart Act, and for interference with the right of

association under s. 4(5) of the Wishart Act, or similar provisions under such Franchise Acts otherwise governing any such class members;

(b) The class members ~~in Ontario, PEI and Alberta~~ seek a declaration that they can rescind or cancel the WDA, and that they are entitled to compensation from GM in the event of such rescission or cancellation.

(c) The class members ~~in Ontario and PEI~~ also claim damages for GM's failure to comply with s. 5 of the Wishart Act or the PEI Act in respect of the WDA, i.e. for GM's failure to provide the disclosure document required by these provisions.

Dealers retain Cassels

55. Months before GM presented the WDA to the affected dealers, GM had publicly stated that it intended to reduce the number of dealers in its network, ~~and that Canada required this to be done as a condition of the GM auto bailout.~~

56. Because of its binding Dealer Agreements with its dealers, GM could only lawfully carry out the reduction by consensual agreement with the dealers whose agreements it wanted to terminate, or through a formal insolvency proceeding.

57. There have been examples of both forms of dealer restructuring in recent history. For example, in April 2009, Chrysler had reduced its dealership network in the United States through a formal insolvency proceeding, but chose to reduce its network in Canada through attrition and not through a formal insolvency proceeding.

58. GM's intention to reduce its dealership network posed an immense and unprecedented threat to the GM dealer body in Canada. Given the fast-paced changes

taking place in the economy generally, and in the automotive industry particularly, the GM dealer body suspected that GM was planning a major announcement regarding its dealership network. The GM dealers knew that they needed to be ready for this event and that time would be of the essence in both their preparation for and response to this impending crisis.

59. Many GM dealers are members of one of the provincial or regional branches of the Canadian Automotive Dealers' Association ("CADA") which is a not-for-profit federation of provincial and regional automotive dealer associations. The purpose of CADA is to act as the national voice of the dealers and to serve as a forceful advocate to government, industry, and the media. As the national federation of automotive dealers, CADA recognized that it was uniquely positioned to organize an effective response to any attempt by GM to eliminate dealers in Canada.

60. In or about April 2009, CADA selected a law firm to represent the GM dealers in the event of a restructuring of the dealership network.

61. CADA selected Cassels based on a number of factors. Cassels held itself out as having depth and expertise in all of the areas likely to be needed: franchising and distribution law and practice, franchisor/dealer relations, class actions and insolvency proceedings. Cassels assured CADA that it would put the full weight of its resources to use in representing the GM dealers in any restructuring or insolvency proceeding that may arise.

62. Another factor in CADA's decision to select Cassels was that Cassels had represented GM's Saturn-Saab dealers in their dealings with GM. Those dealings arose outside of an insolvency proceeding and involved issues of franchise law, the Franchise

Acts, as well as franchisor/dealer relations generally. Cassels assured CADA that the knowledge of GM's standard Dealer Agreement which it gained from the Saturn-Saab retainer, and its experience in acting on behalf of the Saturn-Saab dealers made it ready to "hit the ground running" in the event of a fast-paced restructuring by GM.

63. After selecting Cassels, CADA sent a memorandum dated May 4, 2009 to all GM dealers in Canada, whether or not they were members of CADA. The May 4, 2009 memorandum informed the GM dealers that CADA had selected Cassels to represent the dealers collectively in a restructuring or insolvency by GM. The memorandum urged all GM dealers to fill in the attached form and to pay into a legal fund (the "Cassels Legal Fund") either $5,000 or $2,500 depending on the number of vehicles sold by the dealer in the previous year. The Cassels Legal Fund was to be used to pay Cassels' legal fees and other expenses in representing the dealers in the restructuring or insolvency of GM and preparation therefor. The memorandum also stated that CADA had already contributed $150,000 to provide administrative and logistical support, and to assist with the initial legal and other professional services that may be necessary in preparation for a bankruptcy filing.

64. The memorandum gave urgent and compelling reasons why the GM dealers needed to retain collective counsel. It stated that by paying the retainer, the GM dealers would "be represented" by experienced counsel, have "power in numbers", "force ... other parties to involve [their] counsel at the bargaining table and respect [their] interests". By banding together, the memorandum stated, they would have a "voice" in the restructuring.

65. A similarly worded memorandum was also sent by CADA to the GM dealers on May 13, 2009.

66. In sending the May 4, 2009 memorandum, and receiving the signed back forms and retainer monies, CADA acted as the agent of Cassels. Cassels drafted or, alternatively, assisted CADA in drafting the May 4 and May 13, 2009 memoranda, although they were printed on CADA's letterhead and sent to all GM dealers using CADA's mailing list. Cassels had no means of directly communicating with the GM dealer body and relied on CADA in this regard.

67. Cassels intended that CADA would emphasize to the GM dealers its relevant expertise, stature and GM-specific knowledge and Cassels was aware that CADA had done this in the May 4 and May 13, 2009 memoranda.

68. All of the funds paid into the Cassels Legal Fund were raised at the request of Cassels for the purpose of paying Cassels' legal fees and expenses.

69. The dealers responded strongly to the solicitation. Within a short period of time, the Cassels Legal Fund contained several million dollars.

70. Each class member, including Trillium, which indicated on the form attached to the May 4, 2009 memorandum that they wished to participate in the Cassels Legal Fund and returned the form to CADA retained Cassels to represent it as its counsel in relation to the situation at hand. In doing so, they retained a blue chip, Bay Street law firm which held itself out as having the depth, experience and resources to represent them in any complex and fast-paced restructuring or insolvency which may be coming. However, Cassels' duties as lawyers were not restricted to the class members which returned the

form. By virtue of CADA retaining Cassels on behalf of the GM dealers and the ensuing circumstances described in more detail below, Cassels owed duties to all of the class members.

71. It was an express or, alternatively, implied term of Cassels' retainer with each class member that:

(a) Cassels would provide fearless, loyal, competent and vigorous representation of the GM dealers in asserting their rights and powers under the Dealer Agreements and the Franchise Acts;

(b) Cassels had no conflict of interest and would provide completely faithful representation of the dealers relating to GM's restructuring;

(c) Cassels would promptly share with and use to the sole benefit of the class members the knowledge, information and documents which it had or which were available to it concerning the GM auto bailout, the WDA, the negotiating positions and strategies of GM and Canada, and the legal rights and strategic opportunities available to the class members in a GM restructuring;

(d) Cassels would guard all information received from or concerning the GM dealers in strict confidence unless specifically instructed to disclose such information to third parties; and

(e) Cassels would subordinate their own interests, including their commercial interests, in their representation of the GM dealers.

72. CADA did not suggest, and Cassels did not recommend at any time before the sign-back deadline under the WDA, that the GM dealers retain and instruct any other law firm to act in the event that Cassels had an actual or potential conflict of interest.

Cassels' undisclosed retainer by Canada in relation to the GM auto bailout

73. Unknown to the GM dealers, Cassels was representing Canada throughout the GM auto bailout negotiations. Cassels had also represented Canada in the Chrysler restructuring. Michael Weinczok, a partner of Cassels, led a team of Cassels lawyers acting for Canada.

74. At the time CADA retained Cassels on behalf of the GM dealers it was well known that Canada was the key player on the Canadian restructuring of GM. GM had been in negotiations with Canada for several months before May 4, 2009 concerning a substantial investment to be made by Canada in GM. The GM auto bailout was to be the largest government subsidy ever given to a single ailing corporation in Canadian history.

75. It was widely speculated that, in exchange for its massive investment in GM, Canada would become a large shareholder in GM and would have representation on its Board of Directors. Both of these events materialized. In July 2009, Canada became a 12% shareholder of GM's new parent corporation, General Motors Company, and a representative of Canada was given a seat on General Motors Company's Board of Directors.

76. Starting at the latest in April 2009, Canada conducted its due diligence of GM, and was in extensive meetings and negotiations with GM and its advisers. From this point, Canada was an insider of GM and privy to extremely sensitive information

concerning GM's strategy. In particular, Canada gained detailed knowledge of GM's strategies for handling its dealer network.

77. As stated, Canada ~~was instrumental in~~ approved GM's decision to reduce the number of its dealers. Cassels was in an untenable and indefensible conflict of interest in purporting to act for Canada and the GM dealers. The conflict was palpable and overriding: Canada approved GM's viability plan which provided for the termination of ~~wanted~~ a significant number of GM dealers ~~terminated~~; the dealers wanted to remain as dealers or to be paid as much as possible to surrender their rights.

78. This conflict was known to Cassels both at the time it entered into discussions with CADA about representing the GM dealers, and throughout the period after May 4, 2009. Cassels lawyers discussed and agreed amongst themselves in advance that they would "back off the dealers if their position threatened the [Canada] position."

79. Cassels never informed any of the GM dealers that it acted for Canada on the GM auto bailout.

80. Cassels never obtained the consent of the GM dealers to be represented by Cassels notwithstanding the conflict. Moreover, given the nature and significance of the conflict, Cassels could not have carried out its duties to the GM dealers while at the same time representing Canada, whether relating to a formal or informal restructuring, even if it had obtained the consent of all parties.

81. If Cassels informed CADA that it represented Canada in the GM auto bailout, which is not known to the plaintiff, to Cassels' knowledge, CADA never informed the GM dealers of this fact.

Cassels breached its duties to the affected dealers

82. Shortly after GM sent the WDA to the GM dealers on or about May 20, 2009, CADA sent a memorandum dated May 22, 2009 to the GM dealers regarding the WDA.

83. The memorandum provided an overview of the contents of the WDA. However, it offered no advice, assistance or recommendations to the affected dealers concerning the WDA, other than to explain the consequences of signing or not signing it and to advise the affected dealers to obtain their own independent legal advice. Although the memorandum was sent on CADA's letterhead, Cassels drafted or, alternatively, assisted CADA in drafting it.

84. Despite the promises made in the May 4 and May 13 solicitation memoranda, the May 22 memorandum offered no advice or strategy to the dealers in terms of a response to the WDA.

85. The memorandum neglected to mention the affected dealers' rights under the Franchise Acts. Although GM denied in the WDA that it was a franchisor and therefore was bound by the Franchise Acts, Cassels was aware from its dealings on behalf of the Saturn-Saab dealers that GM was bound by the Franchise Acts and that it was GM's practice not to comply with the Franchise Acts and simply deny that it was so bound. The May 22, 2009 memorandum offered no opinion on whether GM was bound by the Franchise Acts or the consequences thereof.

86. By the time the affected dealers could review the May 22, 2009 memorandum, the opportunity for them to effectively act as a collective for the purpose of negotiating the WDA was rapidly slipping away.

87. Their last chance to act as a collective came on May 24, 2009, two days before the May 26, 2009 sign-back deadline in the WDA. CADA and Cassels organized a national conference call for the affected dealers for that date. Notice of the call was sent out midday on May 22, 2009.

88. During the approximately four-hour call, two lawyers from Cassels, Peter H. Harris Q.C. and Glenn M. Zakaib ~~another lawyer whose name is not known to the plaintiff,~~ gave legal advice to their client dealers regarding the WDA. Mr. Harris is a tax specialist. Mr. Zakaib is a litigation lawyer whose practice focuses on product liability and class action defence.

89. During the May 24, 2009 conference call, Cassels again advised the affected dealers of the consequences of signing or not signing the WDA. ~~They~~ Cassels did not seek instructions to negotiate collectively with GM or Canada over the WDA in the 48 hours remaining until the deadline, and they did not advise the affected dealers in this regard. They did not advise or seek instructions that the affected dealers demand an increase in the Wind-Down payments, or even request an extension of the time to consider the WDA. To the contrary, Mr. Harris told the dealers on the conference call that the WDA was a "take it or leave it" deal.

90. At no time did Cassels advise the affected dealers that GM is a franchisor under the Franchise Acts or that the affected dealers had common law and inalienable statutory rights which were being breached by GM.

91. At no time did Cassels advise the affected dealers that they were entitled to a disclosure document under the Wishart Act, the Alberta Act and the PEI Act or, alternatively, that they were entitled to a reasonable period of time to review and

negotiate the WDA, including pursuant to the right of fair dealing and the right of association under the Franchise Acts.

92. At no time did Cassels advise the affected dealers that they had a statutory right to associate for the purposes of advancing their collective interests and negotiating the WDA under s. 4 of the Wishart Act or similar provisions under such franchise legislation otherwise governing any such class members.

93. At no time did Cassels advise the affected dealers, although they knew or were deemed to know, that the deadline of May 26, 2009 imposed by GM for signing back the WDA was a false deadline and that GM had until May 30, 2009 to satisfy government conditions.

94. At no time did Cassels inform the affected dealers of their conflict of interest or recommend that the affected dealers collectively retain another experienced law firm in the precious hours remaining so that they could be properly represented in this time of unprecedented crisis.

95. Instead, Cassels told the affected dealers that the WDA was a "take-it-or-leave-it" deal and that they should each obtain independent legal advice from their local lawyers in the 48 hours remaining. Despite Cassels' expertise in franchising and dealership relations, its knowledge of the GM Dealer Agreement, its understanding of the complex insolvency process, and its retainer by the dealers for this very situation, Cassels would not sign any dealer's certificate of Independent Legal Advice forming part of the WDA. It left the responsibility of providing independent legal advice to the dealers' local lawyers whom they knew would be unable to provide meaningful advice in the time remaining before the sign-back deadline, and unable, despite their skills, to negotiate as a

collective since the affected dealers could not identify which other dealers had received the WDA or paid into the Cassels Legal Fund as this information was being kept secret by GM, Canada, CADA and Cassels.

96. Moreover, as the May 4 and May 13, 2009 memoranda made clear, and as was known to Cassels, any effective negotiation would require preparation, depth of knowledge, multi-disciplinary legal resources, substantial funding and, most important, strength in numbers. All of the reasons cited in the May 4 and May 13, 2009 memoranda urging all of the dealers to retain Cassels to represent them and to raise a multi-million legal fund for this purpose were engaged. Cassels knew that the affected dealers would have no negotiating power on their own and that their local lawyers would be unable to assist them in any meaningful way.

97. Cassels would not sign any certificate of independent legal advice under the WDA because Cassels knew it was not independent and failed to advise the affected dealers of this fact. Had Cassels signed the certificates, it knew that when the affected dealers learned of Cassels' palpable conflict of interest, they might attempt to repudiate the WDA, to the detriment of its preferred client, Canada, and that Cassels would be exposed to liability.

98. The May 24, 2009 conference call was the last communication to the affected dealers as a group and the last chance for these dealers to organize themselves before the May 26, 2009 sign-back deadline.

99. Approximately 90% of the affected dealers signed back the WDA before the deadline of 6:00 PM on May 26, 2009.

100. Although the agreement of the affected dealers was said to be an essential condition of the GM bailout funds and GM stated to Canada that the dealers were "a critical component of the Restructuring Plan", by reason of the facts pleaded above, the affected dealers were completely shut out of the negotiating process and were the only significant stakeholders in the GM auto bailout which were denied a voice in the restructuring.

Cassels took instructions from continuing dealers

101. During the crisis period from May 20 to 26, 2009, Cassels gave advice to and took instructions from a previously organized Steering Committee consisting of GM dealers, the majority of which were not being asked to sign the WDA ("continuing dealers"). The continuing dealers stood to benefit from the elimination of the affected dealers because they would be able to purchase parts and accessories, tools and equipment from the affected dealers at massive discounts and have fewer competitors. It was in the interests of the continuing dealers that the affected dealers sign the WDA, and do so promptly in order to prevent GM from acting on its veiled threat to make a formal insolvency application.

102. Cassels did not question the composition of the Steering Committee after becoming aware of the conflict between the affected dealers and the continuing dealers, or insist that the continuing and affected dealers be split into two groups for the purposes of advising it and seeking instructions on the negotiations of the WDA with GM and Canada.

103. Further, or in the alternative, Cassels took instructions from CADA which was also in a conflict vis-à-vis the affected dealers. CADA's own interests lay with its

continuing dealers which would support it in the future. CADA viewed the termination of the affected dealers as a necessary sacrifice for the greater good of GM and the continuing dealers.

104. As was known to Cassels, CADA wanted to ensure that GM did not make a formal insolvency application and therefore wanted as many affected dealers as possible to sign the WDA.

105. CADA's policy regarding the affected dealers, which was known to Cassels but not to the affected dealers until it was too late, was to "remain neutral" and to "respect the will of the majority". Unlike its American counterparts which vigorously sought to protect the rights of terminated dealers, CADA refused all requests by the affected dealers to intervene. After the crisis, it described the terminations as "a very unfortunate, but brutal reality".

106. Cassels knew or ought to have known that the interests of CADA and the Steering Committee were not aligned with those of the affected dealers, and, in some cases, were diametrically opposed to their interests.

107. Cassels took no steps to adequately represent or assist the affected dealers during the crisis days from May 20 to 26, 2009 because they were simultaneously acting for Canada, and taking instructions from the conflicted Steering Committee of CADA.

CADA acknowledges conflict between affected dealers and continuing dealers

108. On May 28, 2009, two days after the May 26, 2009 deadline had passed, CADA sent a memorandum to all GM dealers which contributed to the Cassels Legal Fund. The May 28, 2009 memorandum acknowledged the conflict of interest that existed between the affected dealers and the continuing dealers. It stated "the arrangement of separate counsel for the continuing and non-continuing dealers **is best dealt with at this time**" (emphasis added). The memorandum informed the dealers that CADA had selected a separate law firm, Lax O'Sullivan Scott, to represent the continuing dealers going forward and that Cassels would represent the affected dealers. No reason was offered for why the conflict was "best dealt with" after the sign-back deadline under the WDA had passed.

109. The May 28, 2009 memorandum stated that the legal firms were in the process of "reworking their retainer agreements". However, as Lax O'Sullivan Scott had not been previously retained by the dealers, it was only Cassels' retainer agreement that needed "reworking".

110. The decision to select another law firm to represent the continuing dealers after the crisis had passed for the affected dealers was in response to pointed questions to CADA from the affected dealers concerning Cassels' role during the crisis period.

111. The May 28, 2009 memorandum also belatedly acknowledged the conflict in having one Steering Committee represent the continuing and affected dealers. CADA stated that it was "currently reforming [its] Steering Committees" to separate the two conflicting groups.

112. Cassels drafted or, alternatively, assisted CADA in drafting the May 28, 2009 memorandum in an attempt to quell the growing suspicion that Cassels had failed to act on behalf of the affected dealers in the crisis.

113. None of the affected dealers received Cassels' "reworked" retainer, although the memorandum stated that it would be emailed to them as soon as it was completed. Similarly, none of the affected dealers was told what separate Steering Committee, if any, was formed to look after their interests.

114. After the sign-back deadline, CADA returned the legal fees contributed by the GM dealers and told the dealers that it would look after Cassels' legal bills with its own funds.

115. Shortly thereafter, CADA made it known that the affected dealers were on their own and that they should not look to CADA for assistance.

116. Cassels widely publicized its involvement as Canada's legal representative in what was being hailed as the restructuring of the century; it has never publicly acknowledged any role in relation to the affected dealers or CADA.

117. CADA has similarly never publicly mentioned Cassels' role and has stated that it handled all legal work relating to the GM restructuring in-house.

Cassels liable to affected dealers

118. Cassels owed contractual duties and fiduciary duties including those described in paragraph 71 above to all class members, and breached those duties by the acts or omissions particularized in paragraphs 79 to 107 above.

119. Independent of the contractual retainer, Cassels owed duties of care to all class members due to the unique circumstances of their involvement, including the following:

(a) time was of the essence for the affected dealers in organizing themselves into a collective for the purposes of negotiating the WDA;

(b) there could be no reasonable opportunity after the May 24, 2009 conference call organized by CADA and Cassels for the affected dealers to otherwise organize themselves;

(c) Cassels and Mr. Harris participated extensively in the May 24, 2009 conference call and gave legal advice to the affected dealers. Cassels' involvement in the May 24, 2009 conference call was intended to reassure the affected dealers that they had the benefit of the advice and representation of a powerful, experienced Bay Street law firm and that everything that could possibly be done to further their interests was being done or would be done;

(d) because Cassels neither disclosed the conflict nor took any steps to negotiate on behalf of the affected dealers before, during or after the May 24, 2009 conference call, the affected dealers were left with no choice but to sign back the WDA without negotiation or await the dire consequences which GM had caused them to fear if they did not sign it and which Cassels itself said during the May 24, 2009 conference call could result from their refusal to sign; and

(e) the affected dealers had no access to the Cassels Legal Fund to pay legal fees to any firm other than Cassels.

120. By the acts or omissions particularized in paragraphs 79 to 107 above, Cassels was negligent and breached its duty of care to all class members before, during and after the May 24 conference call, by falling below the standard of care required of a lawyer in the circumstances.

Damage caused by Cassels

121. Because of Cassels' acts and omissions, the affected dealers lost their chance to act and be represented as a collective. GM and Canada succeeded in having 90% of the affected dealers sign the WDA without any negotiation.

122. By virtue of its representation of Canada, Cassels was privy to, or was deemed to be privy to, all facts concerning the GM restructuring, including:

(a) that, with proper representation of the affected dealers, the offer contained in the WDA could and would have been substantially increased;

(b) that the sign-back deadline of May 26, 2009 was intended to pressure the affected dealers and their counsel but could have been extended if the affected dealers applied collective negotiating pressure;

(c) that its preferred client, Canada, had imposed the requirement that GM satisfy its bailout conditions~~, including dealership reduction,~~ by May 30, 2009 and could have granted an extension to relieve the undue pressure and unfairness which this caused to the affected dealers;

(d) that GM and Canada wished to avoid GM initiating formal insolvency proceedings in Canada because of the risks and costs associated with such proceedings;

(e) that GM was not prepared to jeopardize the multi-billion dollar GM auto bailout assistance if the affected dealers banded together and held out for more money; and

(f) that contrary to what was implied in the WDA and on the GM dealer conference call, GM likely would not initiate formal insolvency proceedings in Canada even if substantially fewer than 100% of the dealers did not sign the WDA, as would prove to be the case.

123. As a result of the above, the class members suffered and continue to suffer losses and damages equal to the amount they would have received but for Cassels' breach of contract, breach of fiduciary duties and negligence.

124. Each partner of Cassels knew or ought to have known of the conflicting retainer by the GM dealers and Canada, and Cassels' breach of contract, breach of fiduciary duties and negligence relating thereto.

125. Each partner of Cassels who was aware of the existence of the conflict of interest and who failed to take the actions that a reasonable person would have taken to prevent the breach of contract, breach of fiduciary duties and negligence relating thereto~~. Accordingly, each partner of Cassels~~ is jointly liable with Cassels ~~and the other partners of Cassels~~ for the losses and damages which the class members have suffered and continue to suffer.

126. The plaintiff pleads and relies on the *Partnership Act*, R.S.O. 1990, c. P.5, and in particular, ss. 10(1),(2) and (3)(c)(ii), 11 and 13 thereof.

Punitive, Exemplary and Aggravated Damages Against Cassels

126A. In email discussions on May 5, 2009, at around the time that Cassels accepted the dealers' retainer, senior Cassels lawyers discussed and agreed amongst themselves in advance that they would "back off the dealers if their position threatened the [Canada] position." Cassels knew that the two retainers were in direct opposition and deliberately concealed this fact from the affected dealers. Instead, it accepted the dealers' retainer with the prospect of abandoning them in favour of their preferred client, Canada.

126B. By accepting the dealers' retainer, Cassels played into the hands of GM. GM wished the affected dealers to be at their most vulnerable so that they would put up no resistance to any wind-down offer put to them.

126C. Cassels aggravated the harm by telling the affected dealers on the May 24 conference call that the WDA was a "take-it-or-leave-it" offer. In fact, Cassels was fully aware that GM, GMUS, and the Governments wished for GM to avoid filing under the CCAA and that the Canadian and U.S. Governments had authorized GM to reallocate cash from the bailout funds to prevent a GM CCAA filing.

126D. Cassels was further aware that if GM did file under the CCAA, GM intended to allow all affected dealers who rejected the WDA before May 26 an additional seven days in which to accept the Plan B WDA within the CCAA which was nearly identical to the WDA.

126E. Cassels holds itself out as a leading law firm experienced in handling the largest and most sophisticated legal cases. All decisions regarding the taking on of the dealers' retainer were made and approved by senior Cassels lawyers who fully understood the harm that their decisions could cause to those dealers who depended on them. Such harm, which has resulted, included the sudden loss of over 200 auto dealerships, many of which had been owned and operated by the same families for multiple generations.

126F. Cassels breached the bedrock duties of loyalty, trust and honesty that lawyers owe to their clients. Its conduct was motivated by greed and hubris. Such pre-meditated and deceitful conduct by leading members of the Bar is reprehensible and deserving of the highest punitive, exemplary and aggravated damages.

127. The plaintiff proposes that this action be tried at the City of Toronto, Ontario.

February 12, 2010

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