

COURT OF APPEAL FOR ONTARIO

BETWEEN:

TRILLIUM MOTOR WORLD LTD.

**Plaintiff
(Respondent)**

- and -

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

**Defendants
(Appellant)**

NOTICE OF CROSS-APPEAL

THE RESPONDENT, TRILLIUM MOTOR WORLD LTD., CROSS-APPEALS

in this appeal and asks that:

1. this Honourable Court reassess the value of the dealers' lost chance in the amount of no less than \$75 million;
2. in the alternative, the issue of the assessment of the value of the dealers' lost chance be sent back to the trial judge for reassessment in accordance with this Honourable Court's guidance;
3. the costs of the cross-appeal be granted to the Respondent; and
4. such further and other relief be granted as this Honourable Court may deem just.

THE GROUNDS FOR THIS CROSS-APPEAL are as follows:

1. After finding on the balance of probabilities that, “with the proper advice and representation from Cassels, the affected dealers would have banded together and sought to negotiate with GMCL”, the trial judge erred in discounting the value of the lost chance because it was “far from certain that the affected dealers would have banded together and instructed Cassels to negotiate.” Facts that go to the issue of causation must be established on the balance of probabilities and, once they are, they cannot then be considered as “contingencies” in valuing the lost chance.
2. The trial judge erred in holding that any chance of the dealers obtaining more than \$218 million in a collective negotiation with General Motors of Canada Limited (“GMCL”) was “mere speculation”:
 - (a) the trial judge erred in selecting as the maximum possible value of the lost chance to negotiate collectively with GMCL the budget amount that had been approved by GMCL’s U.S. parent to offer to the affected dealers (i.e. \$218 million). In so doing, the trial judge abdicated his responsibility to determine the full value of the dealers’ lost chance, however difficult such value was to assess. Instead, the trial judge confined himself to a budget amount reflected in GMCL’s documents;
 - (b) the trial judge’s conclusion that, “[w]ithout better evidence, it would be unreasonable to peg the amount that the dealers had a real chance of obtaining higher than \$218 million” reflects a misunderstanding of: (i) the requirement that the Plaintiff show that the chance lost was sufficiently real and significant; and (ii) the evidence required to establish a lost chance;
 - (c) the trial judge’s finding that any chance of negotiating more than \$218 million is mere speculation is unsupported, and his reasons in this regard are conclusory. Among other things, the trial judge failed to explain why, in light of the substantial costs and risks of a CCAA filing (which he accepted), there was no real and significant chance that the

\$218 million budget figure could be increased, especially since similar budget figures were increased in the context of negotiations with other stakeholders;

- (d) the trial judge erred in finding that any amount above \$218 million was too speculative in the face of evidence of two experts in multi-party restructurings that supported higher amounts (and in the absence of any alternative amounts put forward by the Defendants). The experts' evidence, while not determinative of the exact value of the lost chance, negates the possibility that any amount above \$218 million was "mere speculation".

3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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Plaintiff (Respondent)

- and -

**GENERAL MOTORS OF CANADA and CASSELS
BROCK and BLACKWELL LLP**
Defendants (Appellants)

Court File No.: C60828

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Proceeding commenced at Toronto

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