

AMENDED THIS July 5, 2011 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT A

RULE/LA RÈGLE 26.02 ()

Court File No. CV-09-00393974-00CP

THE ORDER OF Justice Robell
L'ORDONNANCE DU

ONTARIO

SUPERIOR COURT OF JUSTICE

DATED / FAIT LE July 4, 2011

BETWEEN:

REGISTRAR [Signature] GREFFIER [Signature] GENERAL MOTORS of CANADA LIMITED
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Plaintiff

- and -

BARBARA ABRAMS, BERNIE HEMING, LES MacDONALD, JACKIE FINN, TONY SISTI,
BRIAN LAWTON, and KEN LEWENZA and PETER KENNEDY on their own behalf
respectively and on behalf of all members of the NATIONAL AUTOMOBILE, AEROSPACE,
TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW –
CANADA)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 plaintiff's lawyer 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: December 22, 2009

Issued by: "A. VAICULENAS"
Local Registrar

393 University Avenue, 10th Floor
Toronto, Ontario M5G 1E6

TO: Barbara Abrams
7 Gale Cr. PH-11
St. Catharines, ON
L2R7M8

AND TO: Bernie Heming
1171 Trillium Ct.
Oshawa, ON
L1G 7M2

AND TO: Les MacDonald
615 Wilson Road, North
Oshawa, ON
L1G 6E8

AND TO: Jackie Finn
382 Nassau Street
Oshawa, ON
L1J 4B2

AND TO: Tony Sisti
891 Morand,
Windsor, ON
N9G 1J3

AND TO: ~~Brian Lawton~~
~~P.O. Box 56,~~
~~Rattling Brook, Newfoundland~~
~~A0J 1P0~~

AND TO: Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON
M5H 3R3

Lawyers for Ken Lewenza, Peter Kennedy
and CAW- Canada

I. CLAIM

1. The plaintiff, General Motors of Canada Limited (“GM Canada”), claims against the defendants and all members of the class of persons described below:

(a) an order in accordance with the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”) certifying this proceeding and appointing the named defendants, Barbara Abrams, Bernie Heming, Les MacDonald, Tony Sisti, ~~Brian Lawton~~ and Jackie Finn, as representative defendants for the class comprising all individuals who:

(i) are CAW Retirees, Surviving Spouses or Dependents (as such terms are defined below); and

(ii) resided outside of the Province of Quebec as of December 22, 2009,
(collectively, the “Class”),

where “CAW Retirees” are all former employees of GM Canada who, as of June 8, 2009, had retired from employment with GM Canada and who at the time of retirement were covered by a collective agreement negotiated and entered into by the National Automobile, Aerospace, Transportation and General Workers Union of Canada, (CAW-Canada) (“CAW”) and GM Canada, covering GM Canada employees represented by the CAW (the “Collective Agreement”), and were eligible to receive post-retirement health care benefits which GM Canada provides or provided to the Class from time to time pursuant to a Collective Agreement (the “Retiree Health Care Benefits”), including, without limitation, a person who became an employee of either:

(i) Electro-Motive Canada Co. as a result of the sale of GM Canada’s electromotive diesel business; or

(ii) General Dynamic Land Systems – Canada Corporation as a result of the sale of GM Canada’s defence business,

and who, on or before June 8, 2009, returned to GM Canada to retire pursuant to a Collective Agreement with eligibility to receive Retiree Health Care Benefits;

where "Surviving Spouses" includes all persons who, as of the date of certification and settlement approval, are:

(i) the surviving spouses of a deceased person who was, while living:

(A) a CAW Retiree; or

(B) an hourly employee of GMCL who died prior to June 8, 2009, was covered by a Collective Agreement at the date of his or her death, and at the date of his or her death was eligible to receive an immediate pension under the GM Canada hourly pension plan,

where such surviving spouses are eligible for Retiree Health Care Benefits; or

(ii) the surviving spouses of a deceased person who was an hourly employee of GM Canada who died prior to June 8, 2009 and was covered by a Collective Agreement at the date of his or her death, where such surviving spouses were, immediately prior to January 1, 2010, provided with lifetime Retiree Health Care Benefits; and

where "Dependents" are all persons who, as of the date of certification and settlement approval, are surviving dependents of a deceased person who was, while living, a CAW Retiree and/or, if applicable, a Surviving Spouse, and who are eligible for Retiree Health Care Benefits. For further clarity, a person is not a Dependent for the purpose of this definition if the CAW Retiree is survived by a Surviving Spouse;

(b) a Judgment declaring what is the nature and scope of any contract or other binding legal obligation formed at the time of retirement of the CAW Retirees concerning the provision of Retiree Health Care Benefits to Class members by GM Canada;

- (c) a Judgment declaring that GM Canada is entitled to unilaterally alter or terminate its provision of Retiree Health Care Benefits to members of the Class, as well as the manner of delivery of such health benefits;
- (d) the costs of this action pursuant to the CPA or, alternatively, on a substantial indemnity basis; and
- (e) such further and other relief as this Honourable Court deems just.

II. PARTIES

2. GM Canada is a federally-incorporated Canadian company and a wholly-owned subsidiary of General Motors Company. GM Canada carries on business across Canada, with its registered head office located in Oshawa, Ontario.

3. Barbara Abrams is a CAW Retiree who currently resides in St. Catherines, Ontario. She was employed at GM Canada's manufacturing facility located in St. Catherines, Ontario from 1961 to 1994. Ms. Abrams retired from GM Canada on March 1, 1994.

4. Bernie Heming is a CAW Retiree who currently resides in Oshawa, Ontario. He was employed at GM Canada's manufacturing facility located in Oshawa, Ontario from 1963 to 1997. Mr. Heming retired from GM Canada on July 1, 1997.

5. Les MacDonald is a CAW Retiree who currently resides in Oshawa, Ontario. He was employed at GM Canada's manufacturing facility located in St. Catherines, Ontario from 1973 to 2004. Mr. MacDonald retired from GM Canada on May 1, 2004.

6. Tony Sisti is a CAW Retiree who currently resides in Windsor, Ontario. He was employed at GM Canada's manufacturing facility located in Windsor, Ontario from 1981 to 2009. Mr. Sisti retired from GM Canada on June 1, 2009.

~~7. Brian Lawton is a Qualifying Retiree who currently resides in Rattling Brook, Newfoundland and Labrador. He was employed at GM Canada's manufacturing facility located in London, Ontario from 1973 to 2003.~~

8. Jackie Finn is a Surviving Spouse who currently resides in Oshawa, Ontario. She is the surviving spouse of a CAW Retiree.

9. The CAW is the largest private sector union in Canada, representing over 225,000 members nationwide, with its head office located in Toronto, Ontario. CAW-Canada represents hourly employees of GM Canada and negotiates on their behalf. While the vast majority of hourly employees of GM Canada are currently employed in Ontario, GM Canada has historically employed, and the CAW-Canada has represented, hourly employees in various provinces.

10. Ken Lewenza and Peter Kennedy are the President and Secretary-Treasurer, respectively, of the CAW-Canada, and are necessary parties pursuant to Rule 5.03 of the *Rules of Civil Procedure*.

III. BACKGROUND – ACTIVE EMPLOYEE HEALTH BENEFITS

11. GM Canada has historically provided its non-retired hourly employees (“Employees”) with various health and medical benefits (“Health Benefits”) during the course of their employment with GM Canada.

12. Health Benefits for Employees are set out in the terms of a Supplemental Agreement Covering Health Care Insurance Program, dated September 27, 2005, as amended (the “Health Care Supplemental Agreement”).

IV. POST-RETIREMENT BENEFITS

13. In addition to providing Health Benefits to Employees, GM Canada presently makes payments in respect of Retiree Health Care Benefits to CAW Retirees, Surviving Spouses and Dependents. GM Canada pleads that the provision of Retiree Health Care Benefits to CAW Retirees, Surviving Spouses and Dependents was not intended to create, and did not create, any legal obligation on the part of GM Canada to continue to provide such benefits in any particular form, at any particular level, or at all.

14. The literature and documents describing the provision of Retiree Health Care Benefits contain no representations or other statements that would prohibit or otherwise limit GM Canada’s ability to unilaterally alter the provision of such Retiree Health Care Benefits, including changes to increase applicable deductibles.

15. Increases made to the Retiree Health Care Benefits from time to time by GM Canada were made without any consideration flowing from the CAW Retirees, the Surviving Spouses, or the Dependents.

16. GM Canada pleads that it did not enter into any contractual or other obligation at the time of any CAW Retiree's retirement, or otherwise, to provide ongoing Retiree Health Care Benefits to the Class. Accordingly, GM Canada has the right to unilaterally alter or terminate its provision of Retiree Health Care Benefits to members of the Class, as well as the manner of delivery of such benefits

17. In the alternative, GM Canada pleads that any entitlement of Class members to Retiree Health Care Benefits is limited by the nature and extent of such benefits as they existed on the respective date of the retirement of the applicable CAW Retiree. Accordingly, any subsequent increases in Retiree Health Care Benefits granted by GM Canada have been entirely gratuitous. GM Canada states that it is therefore entitled, in addition or in the alternative to its entitlement to unilaterally alter or terminate Retiree Health Care Benefits, to reduce Retiree Health Care Benefits to the level that existed as at the retirement date of the applicable CAW Retiree.

18. As of June 30, 2009, there were approximately 30,000 CAW Retirees, Surviving Spouses and Dependents across Canada in receipt of such Retiree Health Care Benefits. Over the last year alone, the total value of claims attributable to these Retiree Health Care Benefits provided to CAW Retirees, together with claims of their eligible spouses and dependents, amounted to more than \$85 million, which amount represents a significant annual expense for GM Canada.

V. THE RESTRUCTURING OF GM CANADA

19. The recent global financial market crisis, associated with a dramatically weaker economy and higher gas prices, particularly in North America, and a precipitous drop in demand for automobiles had a significant adverse impact on the automotive sector in the United States and Canada, with automobile sales in the U.S. in 2008 falling to the lowest per capita sales rate in 50 years. These factors and the importance of the industry to the United States led the U.S. Treasury to provide financial support to General Motors Corporation ("GMC") while requiring that GMC undertake a comprehensive restructuring.

20. GMC undertook a comprehensive restructuring in the first half of 2009 pursuant to the requirements of the U.S. Treasury. Ultimately on June 1, 2009 GMC filed for creditor protection under Chapter 11 of United States Bankruptcy Code and a new GM – General Motors Company – emerged out of the court supervised restructuring process.

21. GM Canada was similarly adversely affected by the precipitous drop in automobile sales in North America. This drop, together with the unavailability of private credit and a low cash position led GM Canada to seek financial assistance from the Canadian and Ontario governments. In conjunction with obtaining such financial assistance, GM Canada developed a comprehensive restructuring that was approved by both the Canadian and Ontario governments. This restructuring involved a combined Canadian and Ontario Government investment of \$10.6 billion in the General Motors Company and GM Canada.

22. A critical element to GM Canada's restructuring that was approved by the Canadian and Ontario Governments required changes to the way in which GM Canada dealt with the provision of Retiree Health Care Benefits to retirees. One of such changes involved the elimination of GM Canada's liability to provide Retiree Health Care Benefits to members of the Class.

23. GM Canada thus seeks the declaratory relief sought herein, confirming *inter alia* that GM Canada is entitled to unilaterally alter or terminate its provision of Retiree Health Care Benefits to the Class, as well as the manner of delivery of such benefits.

24. To the extent necessary, GM Canada pleads and relies upon Rules 17.02(f) and (o) with respect to service on parties resident outside of Ontario.

25. GM Canada asks that this action be tried in Toronto.

December 21, 2009

(amended July 4, 2011)

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LAWTON, and KEN LEWENZA and PETER
KENNEDY on their own behalf respectively and on
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AUTOMOBILE, AEROSPACE, TRANSPORTATION
AND GENERAL WORKERS UNION OF CANADA
(CAW - CANADA)

Plaintiff

Defendants

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Ontario

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AMENDED STATEMENT OF CLAIM

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