

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
 )  
JUSTICE PERELL )

MONDAY, THE 4<sup>th</sup> DAY  
OF JULY, 2011

B E T W E E N:

GENERAL MOTORS of CANADA LIMITED

Plaintiff

- and -

BARBARA ABRAMS, BERNIE HEMMING, 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*

**ORDER**

THIS MOTION FOR DIRECTIONS, brought on the consent of all parties, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON BEING ADVISED that the parties have reached a settlement agreement, subject to finalizing all schedules (the “Settlement Agreement”), subject to Court approval;

AND ON BEING ADVISED that the parties intend to seek an order from this Court, on consent, certifying the within proceeding for the purposes of settlement, and approving the settlement on the terms set out in the Settlement Agreement;

AND ON BEING ADVISED that Crawford Class Action Services has agreed to act as Settlement Administrator for the purposes of this proceeding,

1. THIS COURT ORDERS that, for the purposes of this Order, terms not otherwise defined herein shall have the meanings set out in the Settlement Agreement.

2. THIS COURT ORDERS that a hearing by this Court to decide whether to certify this Action as a class proceeding for the purposes of settlement, and whether to approve the settlement on the terms set out in the Settlement Agreement, shall be held on August 24 and 26, 2011, beginning at 10:00 a.m. (Toronto time), at Osgoode Hall, 130 Queen St. West, Toronto, Ontario (the "Certification and Settlement Hearing").

3. THIS COURT ORDERS that, on or before July 18, 2011, notice of the Certification and Settlement Hearing substantially in the form of the notice attached as Schedule "A" (the "First Notice") shall be mailed to Class Members and posted, as provided in paragraph 4 below.

4. THIS COURT ORDERS that the First Notice shall be communicated in the following manner:

(a) By direct mailing (regular mail) of the First Notice and/or a French translation thereof by the Settlement Administrator to all Class Members, on the basis of the contact information contained in the Member Database maintained by General Motors of Canada Limited (which contact information shall be provided by General Motors of Canada Limited to the Settlement Administrator in accordance with this Order); and

(b) By on-line posting of the First Notice on the following website:

**In English: [www.GMCLHCTsettlement.ca](http://www.GMCLHCTsettlement.ca)**

**In French: [www.reglementFSSGMCL.ca](http://www.reglementFSSGMCL.ca)**

5. THIS COURT ORDERS that Crawford Class Action Services is hereby appointed as the Settlement Administrator for the purposes of the Certification and Settlement Hearing, in which capacity Crawford Class Action Services shall be permitted to take whatever steps are necessary for the following undertakings:

(a) Delivery of the First Notice in accordance with paragraph 4 of this Order;

- (b) Receiving objections and inquiries from Class Members in response to the First Notice;
- (c) Reporting promptly to this Court and to counsel for all parties with respect to any objections or inquiries received from Class Members; and
- (d) Such other steps as are necessary to fulfill the duties and responsibilities of the Settlement Administrator contemplated by the terms of the Settlement Agreement and this Order.

6. THIS COURT ORDERS THAT General Motors of Canada Limited provide to the Settlement Administrator an electronic database containing the name and address of each Class Member and, where applicable, identifying whether the Class Member has requested that he/she receive communications in French.

7. THIS COURT ORDERS THAT the disclosure of personal information by General Motors of Canada Limited to the Settlement Administrator pursuant to paragraphs 4 and 6 hereof is necessary to comply with this Order, within the meaning of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

8. THIS COURT ORDERS that the objections of Class Members to the Settlement Agreement will be considered by this Court at the Certification and Settlement Hearing. Any written objections must be received from Class Members at the address below by no later than August 15, 2011, to:

GM Canada Retirees Class Action  
c/o Crawford Class Action Services  
3-505, 133 Weber St. N.  
Waterloo, Ontario  
N2J 3G9

9. THIS COURT ORDERS that the written objections delivered by Class Members in accordance with paragraph 8 of this Order shall include the following:

- (a) The objecting Class Member's name, address, telephone number, fax number (if any), e-mail address (if any), and retiree number;
- (b) A brief statement of the reason for the objection; and
- (c) a statement as to whether the objecting Class Member intends to appear at the Certification and Settlement Hearing and, if so, whether such attendance will be

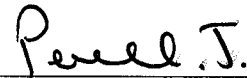
in person or by counsel. If the attendance will be by counsel, the Class Member shall provide the relevant contact information for the designated counsel.

10. THIS COURT ORDERS that Crawford Class Action Services shall, on or before August 19, 2011, file with this Court (with a copy to counsel for all parties) an affidavit setting out the names of all objecting Class Members, together with the corresponding information provided by such Class Members in accordance with paragraph 9 of this Order, subject to taking whatever steps are necessary to maintain the confidentiality of any personal confidential information disclosed in the written objections.

11. THIS COURT ORDERS that the Notice Plan attached hereto as Schedule "B" is hereby approved.

12. THIS COURT ORDERS that any one or more of the Plaintiff, Class Counsel, the Defendants and/or the Settlement Administrator may apply to this Court for further directions or clarification.

13. THIS COURT ORDERS that leave is granted to amend Statement of Claim in the form attached hereto as Schedule "C", and that the title of proceedings in this action be so amended.



PERELL J.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUL 4 2011

AS DOCUMENT NO:  
À TITRE DE DOCUMENT NO.:

PER / PAR:

**NOTICE OF PROPOSED SETTLEMENT  
GENERAL MOTORS OF CANADA LIMITED CLASS ACTION RELATING TO CAW  
RETIREES' POST-RETIREMENT HEALTH CARE BENEFITS**

*Please read this Notice carefully, as it may affect your rights*

**PURPOSE OF THIS NOTICE**

The purpose of this Notice is to advise Class Members of a proposed settlement of a class action relating to CAW Retirees post-retirement health care benefits and of the date of a hearing for court approval of the settlement.

This Notice is to all persons who resided outside of the Province of Quebec on December 22, 2009 and who fall within the following class of persons ("Class Members", or the "Class"):

- **CAW Retirees**, namely all former employees of GM Canada who, as of June 8, 2009: (a) had retired from employment with GM Canada; (b) had elected to immediately commence receiving a pension under the GM Canada pension plan; and (c) were eligible to receive post-retirement health care benefits (the "Retiree Health Care Benefits") from GM Canada under a collective agreement negotiated and entered into by the CAW (a "Collective Agreement").

CAW Retirees include persons who were hourly employees of GM Canada represented by the CAW and became employees 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;

- **Surviving Spouses**, namely people who are:
  - (a) The surviving spouse of a deceased person who was, while living:
    - (i) a CAW Retiree; or
    - (ii) an hourly employee of GM Canada 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 that surviving spouse is eligible for Retiree Health Care Benefits under the GM Canada retiree health care benefits plan; or
  - (b) The surviving spouse 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 that surviving spouse was, immediately prior to January 1, 2010, provided with lifetime Retiree Health Care Benefit coverage under the GM Canada retiree health care benefits plan; and

- **Dependents** of CAW Retirees and Surviving Spouses who are eligible to receive Retiree Health Care Benefits from GM Canada under a Collective Agreement, where both the CAW Retiree and Surviving Spouse are deceased.

## **BACKGROUND OF THE PROPOSED CLASS ACTIONS**

In December 2009, GM Canada commenced a proposed class proceeding against five retirees and one surviving spouse of a deceased retiree (the “Ontario Retiree Representatives”), as well as representatives of the CAW, in the Ontario Superior Court of Justice (Court File No. CV-09-00393974-00CP), seeking a declaration from the court that GM Canada is entitled to unilaterally terminate the Retiree Health Care Benefits it provides to Class Members domiciled outside of Quebec, and that Class Members have no legal or equitable entitlement to continue to receive such Retiree Health Care Benefits (the “Ontario Proceeding”). The Ontario Retiree Representatives maintain that GM Canada has a legal obligation to provide them with Retiree Health Care Benefits.

In May 2010, three retirees and one surviving spouse of a deceased retiree domiciled in Quebec (the “Quebec Retiree Representatives”) filed a motion for authorization of a class action before the Quebec Superior Court (Court File No. 500-06-000508-107), seeking a declaration from the court that GM Canada is not entitled to unilaterally terminate the Retiree Health Care Benefits it provides to Class Members domiciled in Quebec, and that they have a legal entitlement to continue to receive such Retiree Health Care Benefits (the “Quebec Proceeding”). GM Canada maintains that it is entitled to unilaterally terminate the Retiree Health Care Benefits it provides to Class Members domiciled in Quebec.

The parties to the proposed class actions, including GM Canada, the CAW and the Ontario and Quebec Retiree Representatives, have reached a settlement, subject to obtaining the necessary court approvals. The central element of the proposed settlement is the transfer of the obligation to pay post-retirement health care benefits to Class Members from GM Canada to an independent health care trust.

## **BACKGROUND OF THE PROPOSED SETTLEMENT**

As a result of the crisis in the auto industry, which became particularly severe in 2008, General Motors Corporation (then the indirect parent company of GM Canada) filed for creditor protection under Chapter 11 of the United States Bankruptcy Code. GM Canada was faced with an extremely low cash position and a severely restricted private credit market and was forced to seek financial assistance from the Canadian and Ontario Governments.

The establishment of a health care trust was a condition of governmental financial assistance provided to GM Canada. It will allow GM Canada to terminate the benefit plans that provide the Retiree Health Care Benefits to Class Members and to its active employees as of June 8, 2009 when they retire from GM Canada, as well as to their eligible spouses and dependents (the “Covered Group”). Once established, the health care trust will be solely responsible for providing post-retirement health care benefits to the Covered Group.

Since the commencement of the proposed class actions in 2009, extensive negotiations have been held involving the Ontario and Quebec Retiree Representatives and their legal counsel and other expert advisors with regard to GM Canada's financial contribution to the proposed health care trust as well as other details of the proposed health care trust. The proposed settlement is based upon a financial contribution to the health care trust being made by GM Canada which has been bargained for by the Ontario and Quebec Retiree Representatives and their advisors to provide post-retirement health care benefits to the Class Members into the future.

## **TERMS OF THE PROPOSED SETTLEMENT**

If the proposed settlement is approved by the courts of both Ontario and Quebec, GM Canada will contribute to an independently administered health care trust (the "Auto Sector Retiree Health Care Trust") in the following manner:

- An immediate cash payment of \$1 billion, plus interest on that amount since it was paid into escrow in July 2009, less the cost of Retiree Health Care Benefits paid from January 1, 2010 to the implementation date of the proposed settlement and associated eligible expenses;
- An \$800 million promissory note, bearing interest since January 1, 2010, and which must be paid in five instalments of \$255 million each between 2014 and 2018;\* and
- A \$179 million supplementary promissory note, bearing interest since January 1, 2010, and which must be paid in two instalments of \$130 million each in 2014 and 2015.\*

*\* The payments due by GM Canada under the promissory notes are unsecured. They are dependent on the ability of GM Canada to make them at the date they are due. However, once a payment is made to the Auto Sector Retiree Health Care Trust, it can be used only to provide healthcare benefits and will not be available to GM Canada or GM Canada's creditors if GM Canada experiences financial difficulties in the future.*

The Auto Sector Retiree Health Care Trust and its trustees and staff will be completely independent and separate from GM Canada. Following the cash payment and issuing of the promissory notes from GM Canada to the Auto Sector Retiree Health Care Trust:

- GM Canada will no longer provide Retiree Health Care Benefits for the Class Members;
- All future claims for post-retirement health care benefits for Class Members will be exclusively funded by the Auto Sector Retiree Health Care Trust and administered by the trustees; and
- Any contribution and co-payment that a Class Member is currently paying to GM Canada in relation to Retiree Health Care Benefits will in the future be paid to the Auto Sector Retiree Health Care Trust.

*The contributions by GM Canada to the Auto Sector Retiree Health Care Trust will not be sufficient to maintain the Retiree Health Care Benefits at their current levels. The actual level of post-retirement health care benefits that the Auto Sector Retiree Health Care Trust will be able to provide will depend on a number of factors. Most important are the cost of benefits, the*

*longevity of the Covered Group's members, the investment returns earned by the Auto Sector Retiree Health Care Trust, and its administration and investment expenses. It is expected that the trustees of the Auto Sector Retiree Health Care Trust will have to reduce or otherwise modify benefits to ensure that the available funds will be sufficient to look after the needs of current and future retirees and also will be sustainable for the lifetimes of the Covered Group's members. The trustees will have full authority to change benefits and eligibility criteria.*

GM Canada's contributions to the Auto Sector Retirees Health Care Trust are fixed and capped, and the CAW is not permitted to negotiate additional funding for the Retiree Health Care Benefits in the future.

If the court approves the proposed settlement, all Class Members will be bound by the terms of the proposed settlement, unless they opt out of the Class. If the proposed settlement is approved, there will be a further court-approved notice instructing Class Members how to opt out of the Class if they do not wish to participate in the proposed settlement. Any Class Member who opts out in accordance with that procedure will be excluded from participating in the independently operated and funded Auto Sector Retiree Health Care Trust. As is the case for all Class Members, GM Canada will stop providing Retiree Health Care Benefits to those Class Members who choose to opt out.

## **MONTHLY HEALTH CARE CONTRIBUTIONS**

In order to be eligible for retiree health care benefits from the Auto Sector Retiree Health Care Trust, Class Members must *not* opt out of the proposed settlement and must continue to make the contributions they are currently required to make in respect of the Retiree Health Care Benefits provided by GM Canada, as follows:

- If they are 65 years of age or older, make a \$15 monthly contribution, plus applicable taxes; or
- If they are under 65 years of age, make a \$30 monthly contribution, plus applicable taxes.

Sponsored dependent coverage, co-payments and other charges are in addition to these amounts.

*The trustees of the Auto Sector Retiree Health Care Trust may increase the amount of all monthly contributions, co-payments and other charges in the future.*

## **LEGAL FEES OF THE RETIREE REPRESENTATIVES**

Subject to court approval, GM Canada has agreed to pay reasonable legal and expert fees and expenses incurred by the Class Representatives in the Ontario Proceeding. These amounts will *not* be deducted from GM Canada's contributions to the Auto Sector Retiree Health Care Trust.

## **RECOMMENDATION OF RETIREE REPRESENTATIVES AND COUNSEL**

The proposed settlement has been extensively negotiated and carefully considered by the Ontario and Quebec Retiree Representatives and their lawyers and other expert advisors. The Ontario and Quebec Retiree Representatives support and recommend the proposed settlement. They will advise the court that they believe this proposed settlement is in the best interests of Class Members.



## CAW POSITION

In June 2009, the CAW bargaining committee unanimously recommended that current GM Canada employees ratify an agreement to amend the existing Collective Agreement, one element of which was to establish the Auto Sector Retiree Health Care Trust. That agreement was ratified.

## FURTHER INFORMATION ON THE PROPOSED SETTLEMENT

**Further information about the details of the proposed settlement may be found at:**

**In English:** [www.GMCLHCTsettlement.ca](http://www.GMCLHCTsettlement.ca)

**In French:** [www.reglementFSSGMCL.ca](http://www.reglementFSSGMCL.ca)

**A hotline has also been set up to receive your inquiries with respect to the proposed settlement, which we encourage you to contact:**

**Toll free: 1-877-739-8942**

**All Class Members are invited to attend the following information meetings with the Ontario Class Representatives and Class Counsel:**

**Niagara Falls:** Tuesday, August 2, at 10:00 a.m., at the Scotiabank Convention Centre (6815 Stanley Avenue, Niagara Falls, L2G 2N6)

**Oshawa:** Thursday, August 4, at 10:00 a.m., at the General Motors Centre (99 Athol Street East, Oshawa, L1H 1J8)

**Windsor:** Friday, August 5, at 10:00 a.m., at the Giovanni Caboto Club (2175 Parent Avenue, Windsor, N8X 4K2)

*\* Please bring a valid piece of ID as only Class Members and their spouses and dependents will be allowed into the meetings.*

## THE COURT HEARING

**The court hearing with respect to the proposed settlement is scheduled to be held on August 24 and 26, 2011 at 10:00 a.m. (Toronto time), at the courthouse located at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N6, in Room ●.**

At the hearing, the court will be asked to certify the class action, appoint the Ontario Retiree Representatives (Barbara Abrams, Bernie Heming, Les MacDonald, Tony Sisti, and Jackie Finn) as representative defendants in the Ontario Proceeding and approve the proposed settlement.

***Class Members who do not object to the proposed settlement do not need to appear at the hearing or take any other action to indicate their intention to participate in the proposed settlement.***

## **OBJECTIONS TO THE PROPOSED SETTLEMENT**

At the court hearing to be held on August 24 and 26, 2011, the court will consider any objections of Class Members to the proposed settlement. Class Members may, but are not required, to attend the court hearing. Written objections in the form attached as Schedule "A" hereto may be sent to:

GM Canada Retirees Class Action  
c/o Crawford Class Action Services  
3-505, 133 Weber St. N.  
Waterloo, Ontario  
N2J 3G9

Written objections must be received at the above address by no later than [**August 15, 2011**], and should include the following information:

- (a) The objecting Class Member's name, address, telephone number, fax number and e-mail address (if applicable);
- (b) A brief statement setting out the reasons for the objection; and
- (c) A statement as to whether the objecting Class Member intends to appear at the proposed settlement hearing and, if so, whether such attendance will be in person or by counsel. If the attendance will be by counsel, the Class Member shall provide the relevant contact information for the designated counsel.

## **QUESTIONS ABOUT THIS NOTICE, THE PROPOSED SETTLEMENT OR THE CLASS ACTION**

Questions about this notice, the proposed settlement or the class action may be directed by telephone or in writing to class counsel through the Settlement Administrator at the following address:

GM Canada Retirees Class Action  
c/o Crawford Class Action Services  
3-505, 133 Weber St. N.  
Waterloo, Ontario  
N2J 3G9  
Toll free: 1-877-739-8942

*Class Members who seek the advice or guidance of their own personal lawyers do so at their own expense.*

**This Notice has been approved by the Ontario Superior Court of Justice. *Questions about this Notice should not be directed to the court.***

## NOTICE PLAN

### *(General Motors of Canada Limited v. Abrams et al.)*

1. All notices to Class Members shall be communicated directly by the court-appointed administrator (the "Settlement Administrator"), under the direction of all parties (including Class Counsel) in accordance with the terms of this Notice Plan.
2. General Motors of Canada Limited shall use its existing records to generate a complete list of all Class Members and their corresponding contact information (i.e., the Member Database), the accuracy and completeness of which is the responsibility of General Motors of Canada Limited.
3. General Motors of Canada Limited shall provide the Settlement Administrator with a copy of, or access to, the Member Database for the limited purpose of effecting delivery of the notices contemplated by this Notice Plan.

#### **First Notice**

4. On July 4, 2011, the parties shall jointly apply to the Court for appointment of the Settlement Administrator and approval of the draft notice of the intended certification and settlement hearing (the "First Notice").
5. In the case of any Class Member who has previously expressed a preference to receive communications in French, the First Notice shall be sent in English and French. For those Class Members who have not expressed a preference to receive communications in French, the First Notice shall be sent in English only.
6. On or before July 18, 2011, the Settlement Administrator shall effect a direct mailing of the approved First Notice by regular mail to all Class Members, based on the information contained in the Member Database.
7. The Settlement Administrator shall, in the event of any returned mail, take reasonable steps to obtain a correct address and re-mail the First Notice to such new address.
8. The First Notice shall also be posted on the following website:

In English: [www.GMCLHCTsettlement.ca](http://www.GMCLHCTsettlement.ca)

In French: [www.reglementFSSGMCL.ca](http://www.reglementFSSGMCL.ca)

#### **Notice of Certification and Settlement Approval**

9. The parties shall bring a motion for certification and settlement approval before the Court, returnable on August 24 and 26, 2011.
10. At the certification and settlement approval hearing, the parties shall seek approval of the draft Notice of Certification and Settlement Approval and the Opt-Out Form.

11. On or before September 16, 2011, the Settlement Administrator shall effect a direct mailing of the approved Notice of Certification and Settlement Approval and the Opt-Out Form by regular mail to all Class Members (together with French translations, where required), based on the information contained in the Member Database. A French translation thereof will be sent on the same basis as was the case for the First Notice.
12. The Notice of Certification and Settlement Approval and the Opt-Out Form shall also be posted on the following website:  
  
In English: [www.GMCLHCTsettlement.ca](http://www.GMCLHCTsettlement.ca)  
  
In French: [www.reglementFSSGMCL.ca](http://www.reglementFSSGMCL.ca)
13. The Settlement Administrator and/or Class Counsel will forward copies of: (i) the First Notice, (ii) the Notice of Certification and Settlement Approval, and/or (iii) the Opt-Out Form (as applicable) to any Class Member requesting such information.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

GENERAL MOTORS of CANADA LIMITED

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: \_\_\_\_\_

Local Registrar

393 University Avenue, 10<sup>th</sup> 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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*Ontario*  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

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