

CV-09-392089

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**STONELEIGH MOTORS LIMITED, E.L. FORDHAM MOTORS LIMITED, ROBERT
SLESSOR PONTIAC BUICK INC., NIAGARA MOTORS LIMITED, GILES
CHEVROLET LIMITED, UPPER CANADA MOTOR SALES LIMITED, DAVE
HITCHCOCK CHEVROLET LIMITED, LANOUE CHEVROLET INC., ROBINSON
PONTIAC BUICK LTD., SLESSOR MOTORS (NEWMARKET 1979) LIMITED, BUD
RIER CHEVROLET LIMITED and ISLAND CHEVROLET CADILLAC LIMITED**

Plaintiffs

- and -

GENERAL MOTORS OF CANADA LIMITED

Defendant

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' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, 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 November ²⁶ 26, 2009

Issued by


Local Registrar

Address of
court office

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

AND TO: General Motors of Canada Limited
1908 Colonel Sam Drive
Oshawa, ON L1H 8P7

CLAIM

1. The Plaintiffs seek the following relief:
 - (a) a Declaration that their Dealer Sales and Service Agreements (“**Dealer Agreement**”) with the Defendant, General Motors of Canada Limited (“**GM**”), are valid and subsisting agreements in full force and effect in accordance with their terms and entitle them to remain GM dealers until at least October 31, 2015;
 - (b) an interim, interlocutory and permanent injunction prohibiting GM from terminating the Dealer Agreement and from interfering, directly or indirectly, with the business and affairs of the Plaintiffs;
 - (c) an Order requiring GM to comply with and specifically perform all of the terms of the Dealer Agreement, including the Renewal Option (defined below);
 - (d) an Order requiring GM to provide the Plaintiffs with the same rights, benefits, privileges, opportunities and advantages as all other members of GM’s dealer network, including the fair and equitable branding and supply of Products (defined below);
 - (e) an Order, if necessary, staying GM’s Purported Termination (defined below);
 - (f) and/or in the alternative a declaration that GM is estopped from terminating or non-renewing its Dealer Agreement with the Plaintiffs until at least October 31, 2015 or further Order of this Court;
 - (g) compensatory damages, in an amount to be quantified, for loss of profit, loss of goodwill, loss of reputation, loss of business opportunity and loss of market share

during the renewal term of the Plaintiff's Dealer Agreement as a result of GM's breach of its contractual, statutory and equitable duties;

- (h) compensatory damages, in an amount to be quantified, for the wrongful withholding by GM of Pontiac Compensation (defined below) to those Plaintiffs that are entitled to such compensation;
- (i) exemplary and punitive damages for each Plaintiff in the amount of \$1,500,000.00; and
- (j) such further and other relief as counsel may advise and this Honourable Court may permit.

THE PLAINTIFFS

2. The Plaintiffs sell and service General Motors motor cars, trucks, parts and accessories (the "**Products**") which are manufactured and supplied by GM and its affiliates.

3. The Plaintiffs are, as set out below, parties to a Dealer Agreement with GM, which grants to them the right to remain dealers until at least October 31, 2015. The Dealer Agreement is governed by Ontario law.

Stoneleigh

4. The Plaintiff, Stoneleigh Motors Ltd., is located in Midland, Ontario ("**Stoneleigh**"). Stoneleigh's dealer operators and dealer owners are Michael Stone and his son Matthew Stone. The Stone family has operated a GM dealership in Midland continually for thirty-seven years,

since 1972. Since 1972 Stoneleigh's Dealer Agreement has been automatically renewed for consecutive five year terms.

5. Between 1972 and 2004, the Stone family operated its dealership through a predecessor company, Stoneleigh Motors. Stoneleigh employs approximately forty three people, the majority of whom are long standing employees.

6. In or about 2002, at the request of GM, Stoneleigh invested approximately \$400,000 to reimage its facility for the purpose and with the effect of enhancing GM's image and reputation.

7. At all times material to this action, GM warranted and represented that Stoneleigh would remain a long term dealer of General Motors of Canada.

Fordham

8. The Plaintiff, E.L. Fordham Motors Limited, is located in Rodney, Ontario ("**Fordham**") and has been a GM Dealer in good standing in Rodney for fifty six years, since 1953. Since 1953, Fordham's Dealer Agreement has been automatically renewed for consecutive five-year terms.

9. The dealer operator and dealer owner of Fordham is Ronald Fordham. Before Ronald, his father, Donald Fordham, was the dealer operator and dealer owner. The Fordham family has operated a GM dealership in Rodney continually for seventy-three years, from 1936 until the present. Between 1936 and 1953, the Fordham family operated its dealership through a predecessor company, Fordham Motors. Fordham employs fifteen people, many of whom are long term employees.

10. In or about 2006, Scott Winhold of GM management warranted and represented that Fordham would remain a long term dealer of GM. Moreover, in 2006, GM requested that Fordham reimage its facility. In reliance on GM's warranty and representation, and in response to GM's request, Fordham invested approximately \$1 million to reimage its facility.

11. At all times material to this action, GM warranted and represented that Fordham would remain a long term dealer of GM.

Bob Slessor

12. The Plaintiff, Robert Slessor Pontiac Buick Inc., is located in Grimsby, Ontario ("**Robert Slessor**") and has been a GM dealer in good standing for thirty years, since 1979.

13. Bob Slessor's dealer operator and dealer owner is Robert E.C. Slessor and before Robert, his father Robert L. Slessor was the dealer operator and dealer owner. The Slessor family has operated a GM dealership in Grimsby continually for fifty- four years, from 1955 to the present. Between 1955 and 1979, the Slessor family operated its dealership through a predecessor company, Robert Slessor Motors.

14. Since 1955, Robert Slessor's Dealer Agreement has been automatically renewed for consecutive five-year terms. Robert Slessor employs approximately forty-three people, the majority of whom are long standing employees.

15. In or about 2002-2003, at the request of GM, and just prior to the renewal of its Dealer Agreement, Bob Slessor invested approximately \$3.5 million to reimage its facility for the purpose and with the effect of enhancing GM's image and reputation.

16. At all times material to this action and in particular in 2002-2003, GM warranted and represented that Robert Slessor would remain its long term dealer.

Niagara

17. The Plaintiff, Niagara Motors Ltd., is located in Virgil, Ontario and has been a GM Dealer in good standing for fifty two years since 1957 (“**Niagara**”). Since 1957 Niagara’s Dealer Agreement has been automatically renewed for consecutive five-year terms.

18. The dealer operator and dealer owner of Niagara is David W. Dick and before David, his father, David G. Dick, was the dealer operator. The Dick family has operated a GM dealership in Virgil since 1953 and before that a Studebaker dealership since 1946. Niagara employs approximately forty nine employees, the majority of whom are long standing employees.

19. In or about 2001, at the request of GM, and for the purpose and with the effect of enhancing GM’s brand and image, Niagara invested approximately \$4.2 million to reimage its facility.

20. At all times material to this action and in particular in 2001 when it required Niagara to reimage its facility, GM warranted and represented that Niagara would remain a long term dealer of GM.

Giles

21. The Plaintiff, Giles Chevrolet Limited, is located in Stouffville, Ontario, and has been a GM dealer in good standing for forty-nine years since 1960 (“**Giles**”). Since 1960, Giles’ Dealer Agreement has been automatically renewed for consecutive five-year terms.

22. The dealer operator and dealer owner of Giles is Duncan Giles and before Duncan his father Ross Giles was the dealer operator. The Giles family has operated GM dealerships in Ontario since 1902, for over one-hundred years. Giles employs approximately nineteen people, the majority of whom are long standing employees.

23. Over the last nine years, at the request of GM, Giles has invested approximately \$90,000 into its facility and operations for the purpose and with the effect of enhancing GM's brand and image.

24. In or about September, 2008, Chuck Novak and Ted Boyce of GM management warranted and represented that Giles would continue as a long term GM dealer. In reliance on this warranty and representation, Giles invested substantial sums of money into its facility and operations.

25. At all times material to this action, GM has warranted and represented to Giles that it would remain a long term dealer of GM.

Upper Canada

26. The Plaintiff, Upper Canada Motor Sales Limited, is located in Morrisburg, Ontario, and has been a GM dealer in good standing for thirty eight years since 1971 ("**Upper Canada**"). Since 1971 Upper Canada's Dealer Agreement has been automatically renewed for consecutive five-year terms.

27. The dealer operator and dealer owner of Upper Canada is Paul Goupil. Paul's son, Marc Goupil, is in the process of taking over as dealer operator. Upper Canada employs approximately twenty-eight people, the majority of whom are long standing employees.

28. In or about 2005, at the request of GM, Upper Canada invested approximately \$1.6 million to reimage its facility for the purpose and with the effect of enhancing GM's brand and image.

29. At all times material to this action and in particular in 2005, GM has warranted and represented that Upper Canada would remain its long term dealer.

Hitchcock

30. The Plaintiff, Dave Hitchcock Chevrolet Ltd., is located in Essex, Ontario, and has been a GM dealer in good standing for thirty-six years since 1973 ("**Hitchcock**"). Since 1973, Hitchcock's Dealer Agreement has been automatically renewed for consecutive five year terms.

31. The dealer operator and dealer owner of Hitchcock is Dave Hitchcock. Hitchcock employs approximately twenty-seven people, the majority of whom are long standing employees.

32. At all times material to this action GM has warranted and represented to Hitchcock that it would remain a long term dealer.

Lanoué

33. The Plaintiff, Lanoué Chevrolet Inc., is located in Tilbury, Ontario, and has been a GM dealer in good standing since 2009 ("**Lanoué**"). Lanoué employs approximately fifty-one people.

34. Lanoué's dealer operator and dealer owner is Craig Lanoué. Mr. Lanoué is also the dealer operator and dealer owner of Andre Lanoué Pontiac Buick Inc., also located in Tilbury, Ontario, which has been a GM dealer since 1981.

35. Between approximately 2005 and 2008, GM asked and actively encouraged Mr. Lanoue to take over the struggling Chevrolet dealership in Tilbury, Ontario. Throughout this period, GM and in particular its Dealer Organization Business Manager, Derek Tadros, warranted and represented that Lanoue would remain a long term dealer of GM.

Robinson

36. The Plaintiff, Robinson Pontiac Buick Ltd., is located in Guelph, Ontario, and has been a GM dealer in good standing for forty four years since 1965 ("**Robinson**"). Since 1965 Robinson's Dealer Agreement has been automatically renewed for consecutive five-year terms.

37. The dealer operator and dealer owner of Robinson is Cynthia Robinson and before Cynthia, her father Howard Robinson was the dealer operator and dealer owner. Robinson employs approximately forty-four people, the majority of whom are long standing employees.

38. In or about 2008, at the request of GM, Robinson invested approximately \$2 million to reimage its facility for the purpose and with the effect of enhancing GM's brand and reputation.

39. At all times material to this action, and in particular in 2008, GM warranted and represented that Robinson would remain a long term dealer of GM.

Slessor

40. The Plaintiff, Slessor Motors (Newmarket 1979) Limited is located in Newmarket, Ontario ("**Slessor**") and has been a dealer in good standing for thirty years since 1979. Since 1979 Slessor's Dealer Agreement has been automatically renewed for consecutive five-year terms.

41. Slessor's dealer operator and dealer owner is John Slessor, and before John, his father Dwight Slessor was the dealer operator and dealer owner. The Slessor family has operated a GM dealership in Newmarket continually for fifty-two years, from 1957 to the present. Between 1957 and 1979, the Slessor family operated its dealership through a predecessor company, Slessor Motors. Slessor employs approximately fifty-five people, the majority of whom are long standing employees.

42. In or about 1997-1998, at GM's request, Slessor invested approximately \$1.3 million to reimage its facility for the purpose and with the effect of enhancing GM's brand and image.

43. At all times material to this action and in particular in 1997-1998, GM warranted and represented that Slessor would remain its long term dealer.

Bud Rier

44. The Plaintiff, Bud Rier Chevrolet Limited, is located in Paisley, Ontario and has been a GM dealer in good standing for thirty four years since 1975 ("**Bud Rier**"). Since 1975, Bud Rier's Dealer Agreement has been automatically renewed for consecutive five-year terms.

45. Bud Rier's dealer operator and dealer owner is Gary Rier and before Gary his father Bud was the dealer operator and dealer owner. Bud Rier employs approximately fifteen employees, the majority of whom are long term employees.

46. In or about June 2008, David Mitchell and Michele Moxley of GM management required that Bud Rier reimage its facility before the end of 2010. Bud Rier has invested approximately \$250,000 to reimage its facility for the purpose of being renewed in 2010 and with the purpose and affect of enhancing GM's image and reputation.

47. At all times material to this action, GM warranted and represented that Bud Rier would remain a long term dealer of General Motors of Canada.

Island Chevrolet

48. The Plaintiff, Island Chevrolet Cadillac Ltd., is located in Charlottetown, Prince Edward Island, and has been a GM dealer in good standing for 24 years, since 1985 (“**Island Chevrolet**”). Since 1985 Island Chevrolet’s Dealer Agreement has been automatically renewed for consecutive five-year terms.

49. In or about 2005, at the request of GM and for the purpose and with the effect of enhancing GM’s brand and image, Island Chevrolet invested approximately \$1 million to reimage its facility. Island Chevrolet employs approximately thirty-two people, the majority of whom are long standing employees.

50. The dealer operator of Island Chevrolet is Ian Brett and the dealer owner of Island Chevrolet is Lorne Brett, Ian’s father. The Brett family has been operating GM dealerships in Canada since 1967 and has operated Brett Chevrolet Cadillac, in Saint John, New Brunswick, since 1982.

51. In or about 2006 and early 2007, GM actively encouraged the Brett family to acquire Island Chevrolet, which was on the verge of bankruptcy. Michael Speranzini and Eric LaBlanc of GM management warranted and represented to Lorne Brett, for the purpose of inducing the Brett family to acquire Island Chevrolet, that Island Chevrolet would be a long-term partner of GM. In reliance on this warranty and representation, the Brett family spent approximately \$4 million to acquire Island Chevrolet.

52. At all times material to this action and particularly at the time of this request and investment, GM warranted and represented that Island Chevrolet would remain a long term GM dealer.

The Plaintiffs

53. Collectively, the Plaintiffs have invested over 400 years in building and promoting GM's brand and Product in Canada. They have faithfully and diligently served the interests of GM and built a lucrative and profitable customer base for the sale and service of GM's Products.

54. At all times and often under difficult circumstances, the Plaintiffs have faithfully and diligently performed their duties under their Dealer Agreement, built the business, image and reputation of GM in their respective market areas and sedulously fostered the interests of GM. GM has been the beneficiary of the Plaintiffs' and the Plaintiffs' dealer operators' hard work, devotion and investment. GM has been the beneficiary of the Plaintiffs' reasonable reliance on GM's warranties and representations that they would remain long term dealers.

GENERAL MOTORS CANADA

55. GM is a Corporation incorporated under the provisions of the *Canada Business Corporations Act* and headquartered in Oshawa, Ontario. It is a party to and bound by the terms of the Dealer Agreement. It is a franchisor within the meaning of the *Arthur Wishart Act (Franchise Disclosure) 2000, S.O. c.3*. It owes to the Plaintiffs contractual, statutory and equitable obligations of utmost good faith and fair dealing.

THE DEALER AGREEMENT

The Franchise Grant and Its Terms

56. Pursuant to the terms of its Dealer Agreement, GM appointed each of the Plaintiffs as franchisees and dealers of its Products. As dealers of its Products, the Plaintiffs have the right to purchase and be supplied with Products for the term of the Dealer Agreement and the right to sell, service, market and otherwise represent the Products in a market area designated to them in their Dealer Agreement.

57. GM is obliged under the Dealer Agreement to supply its Products to the Plaintiffs and to treat all of its dealers “in a fair and equitable manner”.

58. The purpose of the Dealer Agreement is “to promote mutual trust and confidence” between GM and its dealers for the purpose of realizing mutual opportunities for business success. The Dealer Agreement requires a “spirit of cooperation, trust and confidence between GM and its Dealers”.

59. The Dealer Agreement requires GM at all times to have “full open and honest communications” with its dealers and expressly creates a relationship of “cooperation, trust and confidence.” GM owes the Plaintiffs a contractual, statutory, and equitable duty to deal with them honestly, fairly, and in utmost good faith.

60. GM is required at all times, and in all instances where the interests of the Plaintiffs are affected, to take the interests and legitimate expectations of the Plaintiffs into account when exercising its powers under the Dealer Agreement.

61. The personal reputations of the Plaintiffs' dealer operators and dealer owners are fundamental to the Dealer Agreement. According to the Dealer Agreement:

This is a personal services agreement entered into in reliance on the qualifications, integrity and reputation of Dealer Operator ... and on Dealer's assurance that Dealer Operator will provide personal services by exercising full managerial authority over the Dealership ...

GM enters into this Agreement in reliance on the qualification, integrity and reputation of Dealer Owner ...

62. The Plaintiffs' dealer owners and operators, over many generations, have devoted their lives to the sale and promotion of GM Products. They have, in reliance on the long term nature of their relationship with GM and the mutual obligation of trust and confidence, made substantial investments in their business and foregone significant other business opportunities in service of the brand and image of GM.

Term of the Dealer Agreement

63. The Dealer Agreement states:

[T]his Agreement will expire without any action by either Dealer or GM on October 31, 2010 or in accordance with the terms of the Agreement. *Dealer is assured the opportunity to enter into a new Dealer Agreement [until October 31, 2015] with GM at the expiration date if GM determines Dealer has fulfilled its obligations under this Agreement. (emphasis added)*

64. Pursuant to this provision of the Dealer Agreement, GM pledged to each plaintiff that they would, on October 31, 2010, have the opportunity to renew their Dealer Agreement for a further five year term.

65. This promise was intended to assure and did assure the plaintiffs that if they continued to invest in GM and promote its business and brand, they would remain as dealers, at their election,

for at least another five years. The plaintiffs relied on this assurance to their detriment by continuing to invest in the GM business and brand and by foregoing and/or not pursuing opportunities to become dealers of other manufacturer's products.

66. GM derived a substantial benefit from its dealers' reliance on its pledge of the opportunity to renew for at least an additional five year term in 2010. The dealers continued to build and promote GM's products, building and maintaining a profitable and valuable customer base that would and did accrue to the benefit of GM.

67. As such, the Dealer Agreement contains an irrevocable right of renewal in favour of the Plaintiffs (the "**Renewal Option**").

68. GM has acknowledged that all of the Plaintiffs have fulfilled all of their obligations under their Dealer Agreements.

69. GM is required by its Dealer Agreement and its statutory and common law obligations of good faith and fair dealing to honour the Renewal Option. The Plaintiffs have a legitimate expectation of an opportunity to renew their Dealer Agreements in October 2010 and to remain GM dealers. GM's violation of its promise of the opportunity to renew constitutes a failure to perform its obligation under the Dealer Agreement in good faith.

70. The duty of fair dealing and good faith and the obligation to act in accordance with reasonable commercial standards pursuant to ss. 3 and 4 of the *Arthur Wishart Act* requires GM to honour its pledge of the opportunity to renew and to continue the plaintiffs as dealers in accordance with that pledge.

71. As a result of their investment in their relationship with GM, the Plaintiffs are vulnerable to and dependant upon GM. They do not have the customer base or employees that would permit them to transfer the value that they have built to the promotion and sale of the products of another manufacturer. GM's contractual, statutory, and equitable obligations must be considered and applied in light of the vulnerability and dependence of the Plaintiffs.

72. By virtue of the obligations owed by GM, the length and nature of their relationship and the contractual duties of trust and confidence reposed in the parties, the relationship between the Plaintiffs and GM is akin to a partnership with duties approximating those of a fiduciary.

GENERAL MOTORS' BREACH OF ITS CONTRACTUAL AND STATUTORY OBLIGATIONS

The Purported Termination

73. On or about May 20, 2009, without prior notice, in bad faith and in breach of its obligations, GM sent to each of the Plaintiffs an email (the "**Purported Termination**") informing them that:

GM Canada has decided and we are hereby notifying you that we will not be renewing the Dealer Sales and Service Agreement at the expiry of its current term and accordingly the Dealer Agreement will expire on October 31, 2010.

74. The Purported Termination constitutes a breach of the terms of the Dealer Agreement including the Renewal Option as well as a violation of GM's statutory, common law, and equitable duty to act in utmost good faith.

75. GM's unilateral and deliberate breach of its assurance that the plaintiffs would have the opportunity to renew their Dealer Agreements was undertaken for the improper and unlawful

purpose of confiscating the plaintiffs' goodwill, including their valuable customer base, and transferring that goodwill and value to GM and its dealers whose renewal option remains intact.

76. GM's Purported Termination is void or voidable at the election of each Plaintiff, invalid, unenforceable, and unconscionable.

77. As set out below, the manner in which GM conceived and imposed the Purported Termination is highhanded, oppressive, and patently unfair. The terms of the Purported Termination, including the Wind Down Agreement (defined below), are commercially unreasonable, unconscionable, and patently unfair.

The Wind Down Agreement

78. The Purported Termination enclosed a Wind Down Agreement. The Wind Down Agreement is lengthy and complex and took GM, with benefit of expert legal and financial assistance, months to prepare.

79. Despite that, GM required its dealers to accept or reject its Wind Down Agreement within four business days of its delivery - by 6:00 p.m. on Tuesday May 26, 2009.

80. The Wind Down Agreement required the Plaintiffs to provide GM with a certificate of independent legal advice, to waive all termination assistance rights under the Dealer Agreement and to provide a comprehensive general release in favour of "GM and other GM entities".

81. GM was aware that four business days was insufficient time for its dealers to retain and instruct counsel with the necessary expertise to provide them with meaningful advice. GM was aware that four business days was insufficient time for its dealers to obtain financial and tax

advice to make an informed decision. GM was aware that its dealers could not make a full, informed and fair decision about their rights in four business days.

82. The Wind Down Agreement offered the Plaintiffs a sum of money as purported compensation for the termination of their Dealer Agreement.

83. To the knowledge of GM, in every case, after payment of employee severance and other necessary close down costs, the sum offered by GM provided no compensation at all to the Plaintiffs.

84. Moreover, in order to receive even this amount, the Plaintiffs were required to waive the financial assistance they are otherwise entitled to under their Dealer Agreement including but not limited to the purchase or lease by GM of their dealership premises.

85. GM deliberately created an atmosphere of fear and oppression and denied the Plaintiffs the opportunity to receive fair and meaningful legal advice and financial consultation to permit them to evaluate the Purported Termination. It did so for the improper purpose of pressuring them into accepting a proposal which it knew was substantially less than they were entitled to and to engineer a release from its contractual, statutory and equitable obligations.

86. The Purported Termination, including the Wind Down Agreement, expropriates the customer base and market which the Plaintiffs built and provides the Plaintiffs with no compensation for the breach of their Dealer Agreement and the total loss of their franchise grant and livelihood.

87. The terms of the Wind Down Agreement and the manner in which it was presented were designed to defeat the Plaintiffs' contractual entitlement to and legitimate expectation of the right

to renew their Dealer Agreements. The terms of the Wind Down Agreement and the manner in which it was presented constitute a breach of GM's contractual, common law, and statutory duties of good faith and fair dealing.

Damage During the Renewal Terms

88. The Purported Termination has caused the Plaintiffs to suffer damages which they will continue to suffer throughout the term of the Renewal Option by:

- (a) irreparably damaging the Plaintiffs' and the dealer operators' reputations and goodwill in the marketplace thereby causing the Plaintiffs to suffer a permanent loss in market share;
- (b) substantially undermining the confidence of the Plaintiffs' long term employees and causing these employees to seek employment with the Plaintiffs' competitors, thereby causing the Plaintiffs to suffer permanent loss of market share;
- (c) falsely and inaccurately portraying the Plaintiffs and their dealer operators as failed and substandard dealerships in the marketplace, thereby causing the permanent loss of market position and loss of business reputation;
- (d) causing and encouraging neighbouring GM dealers that were retained by GM to solicit the Plaintiffs' customers and employees thereby diverting business away from the Plaintiffs and causing permanent loss of market share and reputation;
- (e) causing the breakdown of negotiations between one or more of the Plaintiffs and prospective purchasers of the Plaintiffs, thereby causing the loss of a profitable business opportunity for the affected Plaintiffs; and

- (f) causing the breakdown of negotiations between one or more of the Plaintiffs and other specified GM dealers, thereby causing the affected Plaintiffs to lose a profitable opportunity to acquire another GM dealership.

89. The Plaintiffs will continue to suffer these damages for the term of their franchise grant, including the Renewal Option, and they are entitled to compensation for them in conjunction with declaratory and injunctive relief.

GENERAL MOTORS' CONTINUING BREACH OF THE DEALER AGREEMENT

90. As a result of its conduct described above, GM succeeded in having a substantial number of dealers accept the terms of its Wind Down Agreement. When the Plaintiffs refused to accept the Wind Down Agreement, GM first offered to extend the time limit it imposed for its "voluntary" acceptance. When the Plaintiffs maintained their refusal to accept the terms of the Wind Down Agreement, GM undertook a campaign to pressure the Plaintiffs into accepting the Wind Down Agreement by interfering with their businesses and by depriving them of opportunities, advantages and benefits it is extending to its continuing dealers.

91. GM, contrary to its duties of good faith and fair dealing owed to all of its dealers, is in a conflict of interest. It has a vested interest in, and a plan, to cause the failure of the Plaintiffs so that it can, as quickly as possible in accordance with the terms of its Wind Down Agreement, transfer the Plaintiffs' market territory, customer relations, reputation and goodwill to itself and its continuing dealers. Accordingly, it has and continues to, wrongfully prefer the interests and expectations of its continuing dealers over those that it has purported to terminate.

92. GM is actively frustrating the legitimate rights and expectations of the Plaintiffs under the terms of their franchise grant for the wrongful purpose of effecting its decision to unlawfully terminate their Dealer Agreements and to transfer the value and goodwill of the Plaintiffs' businesses to itself and its continuing dealers.

93. Article 16 of the Dealer Agreement provides dealers with the right to have a decision to terminate or not to renew their Dealer Agreement reviewed by senior management of GM ("**Management Review**"). Management Review requires a full and fair review of a decision not to renew or to terminate a dealer and requires GM to issue a decision within thirty (30) days of a dealer requesting such a review.

94. In response to the Purported Termination, all of the Plaintiffs requested a Management Review from GM. GM has refused to provide the Plaintiffs with fair, timely Management Reviews. GM has also refused to provide a fair Management Review process by, among other things, consistently refusing the Plaintiffs' requests to explain the basis upon which GM delivered its purported Notice of Termination.

95. In breach of the Dealer Agreement, its obligations of good faith and fair dealing, its obligation to treat its dealers fairly and equally, and for the improper purpose of coercing the Plaintiffs into accepting the Wind Down Agreement, GM has:

- (a) expropriated their market, unlawfully preferred the interests of GM and its dealers that it has not purported to terminate and provided those continuing dealers with benefits, opportunities and services it has withheld from the Plaintiffs including the receipt of additional Products;

- (b) refused to fill the orders of some or all of the Plaintiffs on a prompt and equitable basis;
- (c) advised and encouraged customers to transfer their business away from the Plaintiffs to GM's other dealers; and
- (d) permitted and encouraged its continuing dealers in the Plaintiffs' general market areas to refer to the termination of some of the Plaintiffs in their advertisements for the wrongful purpose of interfering in the Plaintiffs' relations with their customers and to ensure that those dealers who were retained in or near to the Plaintiffs' markets receive the benefit of the Plaintiffs' customer base.

96. In addition, GM has refused to provide the Plaintiffs with compensation for its discontinued Pontiac line of motorcars although it is providing compensation to its continuing dealers ("**Pontiac Compensation**"). The compensation for the discontinued Pontiac motor cars is based upon 2008 sales. As such, all GM dealers who sold Pontiac motor cars in 2008 are entitled to compensation not just those who have not been terminated.

97. This refusal is a breach of the terms of the Dealer Agreement, its obligation of good faith and fair dealing, its obligation to treat its dealers equally, and was designed to coerce the Plaintiffs into accepting the Wind Down Agreement.

98. GM has refused to provide the Plaintiffs with compensation for the Pontiac motor cars they sold in 2008 for the purpose of interfering with their business and pressuring them into accepting the commercially unreasonable terms of the Wind Down Agreement.

99. Unless GM is enjoined from terminating the Plaintiffs' Dealer Agreements in October 2010 and is required to comply with all of its contractual, statutory and equitable obligations, including the Renewal Option, the Plaintiffs shall be destroyed.

100. The Plaintiffs plead and rely on the provisions of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, C. 3, including sections 3 and 4.

101. The Plaintiffs request that this action be tried in the City of Toronto.

November 26, 2009

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Lawyers for the Plaintiffs

BETWEEN :

STONELEIGH MOTORS LIMITED
et al
Plaintiffs

- and -

GENERAL MOTORS OF CANADA
LIMITED
Defendant

Court File No.

CV-09-392089

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at TORONTO

STATEMENT OF CLAIM

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