

SUPERIOR COURT

(Class Actions Chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000729-158
500-06-000687-141

DATE: May 6, 2024

BY THE HONOURABLE PIERRE NOLLET., J.S.C.

500-06-000729-158

MICHAEL GAGNON

Applicant

v.

GENERAL MOTORS OF CANADA COMPANY

GENERAL MOTORS LLC

Defendants

No. 500-06-000687-141

MICHAEL GAGNON

Applicant

v.

GENERAL MOTORS OF CANADA COMPANY

GENERAL MOTORS LLC

Defendants.

JUDGMENT

OVERVIEW

[1] The Court has received a RE-AMENDED APPLICATION FOR THE APPROVAL OF NOTICES TO CLASS MEMBERS, TO AMEND THE APPLICATIONS TO INSTITUTE A CLASS ACTION AND AUTHORIZE A CLASS ACTION FOR SETTLEMENT PURPOSES AS OF APRIL 11, 2024¹. (“**the Application**”).

[2] On March 19, 2014, the Applicant brought his Application for Authorization against the Defendants General Motors of Canada and General Motors Company (the “Defendants”) regarding the ignition switch defect (the “Québec IS Action”) (File court number: 500-06-000687-141) on behalf of the following proposed class:

All persons in Quebec (including but not limited to individuals, corporations, and estates) who, on the dates of February 10, 2014, February 26, 2014 and March 31, 2014 owned one of the following vehicles:

- 2005-2010 Chevrolet Cobalt
- 2006-2011 Chevrolet HHR
- 2000-2014 Chevrolet Impala
- 2005-2006 Pontiac Pursuit
- 2007-2010 Pontiac G5
- 2006-2010 Pontiac Solstice
- 2003-2007 Saturn ION
- 2007-2010 Saturn Sky

[3] On January 23, 2015, the Applicant brought another Application for Authorization against the Defendants, General Motors of Canada and General Motors Company (the “Defendants”) regarding the electric power steering defect (the “Québec EPS Action”) (File Court number: 500-06-000729-158) on behalf of the following proposed class:

All persons in Quebec (including but not limited to individuals, corporations, and estates) who, on March 31, 2014, owned one of the following Subject Vehicles:

- 2004-2006, 2008, 2009 Chevrolet Malibu
- 2004-2006 Chevrolet Malibu Maxx
- 2009-2010 Chevrolet HHR

¹ The reference to April 11, 2024 is simply intended to identify the date of the last version of the modifications. The re-modified application was submitted on April 22, 2024.

- 2010 Chevrolet Cobalt
- 2008-2009 Saturn Aura
- 2004-2007 Saturn ION
- 2005, 2006, 2008, 2009 Pontiac G6

[4] The Québec EPS Action and the Québec IS Action are altogether called the “**Quebec Actions**”.

1.1 The background in Ontario.

[5] On December 20, 2023, in the Ontario file, a Motion for consent certification and notice approval was filed and made returnable January 8, 2024.

[6] On January 16, 2024, Justice Perell of the Ontario Superior Court of Justice certified the *Ontario Action* and the National Settlement Class for the purposes of settlement; discontinued class claims for wrongful death, personal injury claims under the *Family Law Act* (and analogous legislation in other Provinces), and actual physical property damage arising from a motor vehicle accident involving a Subject Vehicle; appointed JND Legal Administration as Settlement Administrator to perform the duties set out in the Settlement Agreement; and approved the Short-Form Certification Notice, Long-Form Certification Notice and the Notice Program².

[7] Following the March 4, 2024 decision of the Quebec Superior Court on the insufficiency of the Notice Program and Notices for Quebec purposes, the Ontario Applicant filed an Application to modify the Certification Notices and Notice Program in Ontario as well.

[8] This Application is scheduled to be heard on May 6, 2024.

1.2 The Application in Quebec

[9] In support of the Application and of the sufficiency of the Notice Program, a sworn declaration (Affidavit) from Ms. Jennifer Keough has been entered as evidence.³ Ms. Keough is the Chief Executive Officer of JND Legal Administration, the Settlement Administrator to be appointed.

[10] A second sworn declaration in support of the Application was filed by a lawyer from Rochon Genova, co-counsels for Plaintiffs. His Affidavit gives an overview of the procedural history in all jurisdictions and specifies the defect identified in certain GM vehicles from 1997 onwards.

² R-1.

³ R-10 March 15, 2024.

[11] He explains, amongst other things, that the principal allegation in both the Quebec Actions and the Ontario Action is that the subject ignition switches are prone to too-easy rotation and so can inadvertently move from the “run” position to the “accessory” or “off” position while the vehicle is in motion, resulting in a shutdown of the vehicle’s electrical system, complete loss of engine power and steering/braking assists, and disabling of the airbags. This defect is dangerous and has been associated with serious injuries and deaths.

[12] Similarly to the Ontario proceedings, the Application seeks to amend the Application for Authorization to remove any allegation regarding certain damages associated with owning a vehicle subject to the recalls⁴. As stated in Section 11.2 of the Settlement Agreement⁵:

“[i]t is a fundamental condition of this Settlement and the intention of the Parties that any and all class or representative claims, suits, actions or proceedings for wrongful death, personal injury (and related family/dependent claims), and/or actual physical property damage arising from a motor vehicle accident involving a Subject Vehicle shall be removed, dismissed or discontinued through a Final Amendment Order or Final Discontinuance Order, and that such claims, suits, actions or proceedings be permitted to proceed as individual claims, suits, actions, or proceedings only”.

[13] For Quebec residents, injuries and deaths caused by an automobile, by the use thereof or by the load carried in or on an automobile, is indemnifiable by the Société de l’assurance automobile du Québec regardless of who is at fault.

[14] The Application also seeks the approval of a revised Notice Program and related Notices.

2. APPLICABLE LAW

[15] The key provisions of the Civil Code of procedure (**CCP**) with respect to Authorization, Settlement approval and Notices are as follows:

576. The judgment authorizing a class action describes the class whose members will be bound by the class action judgment, appoints the representative plaintiff and identifies the main issues to be dealt with collectively and the conclusions sought in relation to those issues. It describes any subclasses created and determines the district in which the class action is to be instituted.

⁴ Exhibit R-2, *Amended motion to authorize the bringing of a class action and to ascribe the status of representative* in the *Québec IS Action* (500-06-000687-141) and in the *Amended motion to authorize the bringing of a class action and to ascribe the status of representative* (the *Québec EPS Action* (500-06-000729-158)).

⁵ Exhibit R-3.

The judgment orders the publication of a notice to class members; it may also order the representative plaintiff or a party to make information on the class action available to the class members, including by setting up a website.

The judgment also determines the time limit for opting out of the class. The opting-out period cannot be shorter than 30 days or longer than six months after the date of the notice to class members. The time limit for opting out is a strict time limit, although a class member, with leave of the court, may opt out after its expiry on proving that it was impossible in fact for the class member to act sooner.

590. A transaction, acceptance of a tender, or an acquiescence is valid only if approved by the court. Such approval cannot be given unless notice has been given to the class members.

In the case of a transaction, the notice must state that the transaction will be submitted to the court for approval on the date and at the place indicated. It must specify the nature of the transaction, the method of execution chosen and the procedure to be followed by class members to prove their claim. The notice must also inform class members that they may assert their contentions before the court regarding the proposed transaction and the distribution of any remaining balance. The judgment approving the transaction determines, if necessary, the mechanics of its execution.

[The Court underlines]

3. ANALYSIS

[16] This decision deals with the portion of the Application seeking Court's approval of the Revised Short Form Notice⁶, a CGM - Standard FRENCH Newspaper Ad⁷, a CGM - Simplified Print Ad (French) - 5.04x6.29⁸, Various mock-up of electronic media adds⁹, a Revised Long Form Notice¹⁰, the Revised Notice Program¹¹, the appointment of JND Legal Administration as Settlement Administrator, the Opt-Out Form¹², the Opt-Out deadline, the Approval hearing and the manner in which comments on or objection to the Settlement Agreement can be done using the Objection Form¹³.

3.1 Short Form Notice

[17] The Short Form Notice is two pages long and contains a summary of all the relevant information relating to the Settlement Agreement, the options available to the

⁶ Revised Exhibit R-4.

⁷ Version of 3.21.2024.

⁸ Version of 3.20.2024.

⁹ French Media Version of 3.20.2024.

¹⁰ Revised Exhibit R-5.

¹¹ Revised Exhibit R-6.

¹² Revised Exhibit R-7.

¹³ Revised Exhibit R-8.

Class Members, including the deadline to opt-out, the deadline to object or comment on the Settlement Agreement, contains a hyperlink to various relevant documents including the Long Form Notice, the Settlement Agreement. It will be sent to Class Members through email.

[18] Remains to be inserted the date at which the actual Approval Hearing will take place. The room in which it will take place is subject to change and will be posted on the Settlement Administrator and Class Counsel websites if and when it changes.

[19] The Court shall approve, at a later date, the **dissemination date** as well as the **approval hearing date** to be inserted in the Revised Short Form Notices.

3.2 Revised Long Form Notice

[20] The notice is intended to inform putative Class Members of various elements: the authorization of the Class Action for settlement purposes, the modification to the Application for Authorization, the Settlement Agreement and all putative Class Members rights and obligations arising therefrom.

[21] Following the Court's comments, the parties modified the Long Form Notice to include most of the missing elements. It does conform to sections 579, 581 and 590 CPC.

[22] The Court shall approve, at a later date, the **dissemination date** as well as the **approval hearing date** to be inserted in the Revised Long Form Notice.

3.3 The Revised Notice Program

[23] The Revised Notice Program provides for the setting up of a Settlement Website by the Settlement Administrator with the following information:

- 23.1. English and French copies of the Settlement Agreement as well as the Certification and Approval notices on the.
- 23.2. A summary of the benefits available to Eligible Claimants;
- 23.3. The ability of Settlement Class Members to sign up to receive updates;
- 23.4. A searchable database by Vehicule Identification Number (VIN);
- 23.5. Information on key dates and procedures for Opting-Out, Objecting and the Settlement Approval Hearings;
- 23.6. A Settlement claims process;
- 23.7. A toll-free phone number;

[24] Notices include Revised Long-Form Notice to be posted on the Settlement Website, a Revised Short Form Notice to be emailed to Settlement Class Members, a press release, a modified version of the Revised Short Form Notice to be published in the print and digital replica editions of the newspapers and a reminder press release.

[25] As for the dissemination method, the Settlement Administrator will deliver the Revised Short Form Notice by email to Settlement Class Members for whom Defendants have provided a valid e-mail address as well as those Settlement Class Members who have contacted Applicants' counsel. The modified version of the Revised Short Form Notice will be published in various print newspapers as well as their digital replica.

[26] Counsel for the Applicants will post the Revised Long Form Notices and refer to the Settlement Website.

3.3.1.1 The putative Class Members will be emailed directly.

[27] The Court tends to agree with the parties that direct email may be the most efficient way to inform putative Class Members.

[28] The Court has obtained evidence with respect to the expected effectiveness of Revised Notice Program.

FOR THESE REASONS, THE COURT:

<p>[29] GRANTS the Re-Amended Application dated as of April 11, 2024;</p>	<p>ACCORDE la demande de modification datée du 11 avril 2024 ;</p>
<p>[30] PERMITS the Applicant to amend the "Amended Application for authorization to institute a class action and to appoint a representative plaintiff", as set forth in the "<i>Re-Amended Application for authorization to institute a class action and to appoint a representative plaintiff</i>", in the file 500-06-000687-141;</p>	<p>PERMET au demandeur de modifier la « Demande modifiée d'autorisation d'exercer un recours collectif et d'être nommé représentant des demandeurs, tel qu'énoncé dans la « <i>Demande remodifiée d'autorisation d'exercer un recours collectif et de nommer un représentant au groupe</i> », dans le dossier 500-06-000687-141 ;</p>
<p>[31] PERMITS the Applicant to amend the "Application for authorization to institute a class action and to appoint a representative plaintiff", as set forth in the "<i>Re-Amended Application for authorization to institute a class action and to appoint a representative plaintiff</i>", in the file 500-06-000729-158;</p>	<p>PERMET au demandeur de modifier la « Demande modifiée d'autorisation d'exercer un recours collectif et d'être nommé représentant des demandeurs, tel qu'énoncé dans la « <i>Demande remodifiée d'autorisation d'exercer un recours collectif et de nommer un</i></p>

	<i>représentant au groupe »</i> , dans le dossier 500-06-000729-158 ;
[32] AUTHORIZES the bringing of a class action and to ascribe the status of representative filed by Applicant Michael Gagnon for settlement purposes only and APPOINTS Michael Gagnon as the representative plaintiff in both proceedings 500-06-000687-141 and 500-06-000729-158;	AUTORISE la demande d'introduction d'une action collective et pour attribuer le statut de représentant, déposée par le demandeur Michael Gagnon, aux fins de règlement seulement et NOMME Michael Gagnon à titre de représentant demandeur dans les deux instances 500-06-000687-141 et 500-06-000729-158 ;
[33] APPROVES the Revised Notice Program (filed as Exhibit R-6) and all its Schedules;	APPROUVE le Programme révisé de diffusion des avis (déposé comme pièce R-6) et toutes ses annexes ;
[34] APPROVES the dissemination of the Schedules of the Revised Notice Program pursuant to such Revised Notice Program;	APPROUVE la diffusion des avis révisés qui se trouvent en annexes au Programme révisé de diffusion des avis ;
[35] ORDERS that the Settlement Approval Hearing in Quebec will proceed on a date and at a time to be set by the Court in accordance with a timetable to be provided by the Parties and approved by the Court at a later date;	ORDONNE que l'audience d'approbation du Règlement au Québec se déroule à une date et à une heure qui seront fixées par la Cour à une date ultérieure conformément à un calendrier qui sera fourni par les parties et approuvé par la Cour;
[36] ORDERS that the date and time of the Settlement Approval Hearing in Quebec be stated in the Revised Short and Long notices to be sent as part of the Revised Notice Program, including its Schedules, once the date and time of the Settlement Approval Hearing in Quebec is set by the Court, subject to any adjournment by the Court without further notice to the Quebec Settlement Class members other than that which may be posted on the Settlement Website maintained by the Settlement Administrator and Class Counsel;	ORDONNE que la date et l'heure de l'audience d'approbation du règlement au Québec soient indiquées dans les avis court et détaillé révisés qui seront envoyés dans le cadre du Programme révisé de diffusion des avis, y compris ses annexes, une fois que la date et l'heure de l'audience d'approbation du règlement au Québec sont fixées par la Cour, sous réserve de tout ajournement par la Cour sans autre préavis aux membres du groupe de Règlement du Québec, autre que celui qui peut être affiché sur le Site Web du Règlement

	tenu à jour par l'administrateur du règlement et les avocats du groupe.
[37] ORDERS that the Approval Hearing in Quebec will proceed in room 2.08 of the Montreal Court House or in any other room as the Judge sitting in room 2.08 on that day, may designate, subject to any adjournment by the Court without further notice to the Quebec Settlement Class members other than that which may be posted on the Settlement Website maintained by the Settlement Administrator or on Class Counsel's website;	ORDONNE que l'audience d'approbation au Québec se déroule dans en salle 2.08 du Palais de justice de Montréal ou dans toute autre salle que le juge siégeant en salle 2.08 ce jour-là peut désigner, sous réserve de tout ajournement par la Cour sans autre avis aux membres du groupe visé par le règlement du Québec autre que celui qui peut être affiché sur le site Web de l'administrateur du règlement tenu à jour par l'administrateur du règlement ou sur le site des avocats du groupe;
[38] ORDERS that JND Legal Administration be appointed as Settlement Administrator to perform the duties set out in the Settlement Agreement;	ORDONNE que JND Legal Administration soit nommée à titre d'administrateur du règlement pour s'acquitter des fonctions énoncées dans l'Entente de règlement;
[39] APPROVES the Revised Opt-Out Form, filed as EXHIBIT-R-7;	APPROUVE le formulaire d'exclusion révisé, déposé en tant que pièce-R-7;
[40] ORDERS that all Quebec Settlement Class members may opt out and exclude themselves from this proceeding shall deliver a completed Opt-Out form (EXHIBIT-R-7) to the Clerk of the Superior Court of Quebec, in accordance with the instructions contained in said form no later than the Opt-Out Deadline (being sixty (60) days after notice of the Settlement Approval Hearing is first published or disseminated in accordance with the Revised Notice Program);	ORDONNE que, pour que les membres du groupe visé par le règlement du Québec puissent se retirer et s'exclure de la présente instance, ils doivent remettre un formulaire d'exclusion dûment rempli (pièce R-7), au greffier de la Cour supérieure du Québec, conformément aux instructions contenues dans ledit formulaire, au plus tard à la date limite d'exclusion (soit soixante (60) jours après la première publication ou diffusion de l'avis de l'audience d'approbation du règlement conformément au Programme révisé de diffusion des avis);
[41] ORDERS that all Quebec Settlement Class members who do not opt out of this proceeding by the Opt-Out Deadline shall be	ORDONNE que tous les membres du groupe visés par le règlement du Québec et qui ne se s'excluent pas de

<p>bound as of the Effective Date by all terms of the Settlement Agreement, if it is approved by this Court, and may not opt out of this action in the future.</p>	<p>la présente instance avant la date limite d'exclusion, soient liés par toutes les modalités de l'Entente de règlement à compter de la Date d'entrée en vigueur prévue à l'Entente de règlement, si celle-ci est approuvée par la Cour, et ne puissent plus s'exclure de la présente action à l'avenir.</p>
<p>[42] APPROVES the Revised Objection Form filed as EXHIBIT-R-8.</p>	<p>APPROUVE le formulaire d'opposition révisé déposée en tant que pièce-R-8</p>
<p>[43] ORDERS that Quebec Settlement Class members who wish to file with the Court, comments or an objection to the Settlement shall deliver a completed Revised Objection Form (EXHIBIT-R-8) to the Clerk of the Superior Court of Quebec in accordance with the instructions contained in said form, no later than the Objection Deadline, being sixty (60) days after notice of the Approval Hearing is first published or disseminated in accordance with the Revised Notice Program.</p>	<p>ORDONNE aux membres du groupe visé par le règlement du Québec qui souhaitent déposer auprès de la Cour Supérieure une opposition ou des commentaires au sujet de l'Entente de règlement, de remettre le formulaire d'opposition révisé (pièce-R-8) dûment rempli, au greffier de la Cour supérieure du Québec conformément aux instructions contenues dans ledit formulaire, au plus tard à la date limite d'opposition, soit soixante (60) jours après la première publication ou diffusion de l'avis de l'audience d'approbation conformément au Programme révisé de diffusion des avis ;</p>
<p>[44] ORDERS that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order, including authorization of the Quebec Settlement Class for settlement purposes and all written elections to opt-out delivered pursuant to this Order, shall be set aside and declared null and void and of no force or effect, upon application made to this Court.</p>	<p>ORDONNE que, si l'Entente de règlement n'est pas approuvée, si elle est résiliée conformément à ses modalités ou si elle ne prend pas effet pour quelque raison que ce soit, les présentes ordonnances, y compris l'autorisation du groupe visé par le Règlement du Québec aux fins du règlement et tous les choix écrits d'exclusion donnés en vertu du présent jugement, seront annulés et déclarés nuls, nonavenus et sans effet, sur demande présentée à notre Cour;</p>

[45] **WITHOUT LEGAL COSTS.**

SANS FRAIS DE JUSTICE.



Signature numérique
de Pierre Nollet

Date : 2024.05.06

08:24:40 -04'00'

HONOURABLE PIERRE NOLLET J. S. C.

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Hearing date: Paper process