

# CANADIAN NATIONWIDE CLASS ACTION SETTLEMENT AGREEMENT

## PREAMBLE AND RECITALS

WHEREAS seventeen (17) proposed class actions have been commenced in Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Quebec, and Saskatchewan (specifically defined in paragraph 1 herein as the "Actions") alleging, *inter alia*, that the nylon intake manifold gaskets installed in certain General Motors vehicles were defective.

AND WHEREAS the capitalized defined terms used in this preamble and recitals section shall have the meaning ascribed to such terms in paragraph 1 of this Agreement.

AND WHEREAS GM denies all allegations of wrongdoing asserted in the Actions and denies liability under any cause of action asserted therein. Specifically, among other things, GM denies the alleged defects, including the alleged defects in the lower intake manifold gaskets.

AND WHEREAS GM further contends that it has always attempted to put its customers first and has made all reasonable efforts to satisfy any concerns presented by customers relating to its product lines.

AND WHEREAS the Parties recognize that the outcome of the Actions is uncertain and that pursuing the Actions to litigated judgments would entail substantial cost, risk, and delay.

AND WHEREAS the Representative Plaintiffs and their counsel have conducted an investigation and evaluation of the factual and legal issues raised by the claims asserted in the Actions and believe that, in light of the cost, risk, and delay of continued litigation balanced against the benefits of the settlement set forth in this Agreement, that such settlement is in the best interests of, and is fair, reasonable, and adequate for the Class as a whole.

AND WHEREAS, through this Settlement, the Parties desire to compromise and settle all issues and claims that have been, or could have been, brought in any of the Actions by or on behalf of Class Members arising out of the issues pleaded, and that GM should be fully and finally released from any liability with respect to those issues and claims as set out herein.

AND WHEREAS, save and except for the Actions filed in the Province of Quebec, certification of a national class shall be sought in the Ontario Superior Court of Justice based on the substantial connections of Ontario with the facts giving rise to the Actions.

AND WHEREAS the Parties agree to undertake all reasonable efforts, including all steps and efforts that may become necessary by order of the Court, to effectuate the terms and purposes of this Agreement, to secure the Court's approval of it, and to oppose any objections to and appeals from any order of approval.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Representative Plaintiffs (on behalf of themselves and the Class Members), and the Defendants, General Motors Corporation and General Motors of Canada Limited, by and through their respective counsel, in settlement and compromise of the Actions, agree as follows:

**1. DEFINITIONS**

1.1. "Actions" means the following lawsuits:

(a) *Stewart et al. v. General Motors of Canada Limited et al.*, Ontario Superior Court of Justice, Action No. 06-CV-310082CP;

(b) *Ely et al. v. General Motors of Canada Limited et al.*, Court of Queen's Bench of Alberta, Judicial District of Edmonton, Action number 0603-05381;

- (c) *Vaidya et al. v. General Motors of Canada Limited et al.*, Court of Queen's Bench of Alberta, Judicial District of Calgary, Action number 0601-06001;
- (d) *Goodridge v. General Motors of Canada Limited et al.*, Supreme Court of British Columbia, Action number S-062846;
- (e) *MacDermid et al. v. General Motors of Canada Limited et al.*, Supreme Court of British Columbia, Action number 06 2057;
- (f) *Turl v. General Motors of Canada Limited et al.*, The Queen's Bench, Winnipeg Centre, Action number C1 06-01-47168;
- (g) *Kilcup et al. v. General Motors of Canada Limited et al.*, The Queen's Bench, Winnipeg Centre, Action number 406 01 47298;
- (h) *Steeves v. General Motors of Canada et al.*, Court of Queen's Bench of New Brunswick, Trial Division, Judicial District of Moncton, Action number MC039906;
- (i) *Scheeler v. General Motors of Canada Limited et al.*, Supreme Court of Newfoundland and Labrador, Trial Division, Action number 2006 01T 2451 CP;
- (j) *Demers v. General Motors of Canada Limited et al.*, Supreme Court of Nova Scotia, Action number S.H. 265628;
- (k) *Jamieson v. General Motors of Canada Limited*, Ontario Superior Court of Justice, Action number 06-CV-310142CP;

- (l) *Townsend et al. v. General Motors of Canada Limited et al.*, Ontario Superior Court of Justice, Action number 06-CV-310869CP;
- (m) *Arsenault v. General Motors of Canada Limited et al.*, Supreme Court of Prince Edward Island, Trial Division, Action number S1 -GS-21982;
- (n) *Gauthier v. General Motors of Canada Limited et al.*, Quebec Superior Court, District of Montreal, Action number 06-000351-060
- (o) *Tsuk v. General Motors of Canada Limited*, Quebec Superior Court, District of Montreal, Action number 06-000353-066;
- (p) *Brooman et al. v. General Motors of Canada Limited et al.*, Court of Queen's Bench, Judicial Centre of Regina, Action number Q.B. No. 917 of 2006;  
and
- (q) *Muz v. General Motors of Canada Limited et al.*, Court of Queen's Bench for Saskatchewan, Judicial Centre of Regina, Action number Q.B.G. No. 1135 of A.D. 2006.

Nothing contained in the definition of "Actions" is intended to, or shall be deemed to, limit the scope of the nationwide settlement or the release contained herein.

1.2. "Agreement" means the agreement set out herein.

1.3. "CCC" means the Customer Communications Centre operated by Aditya Birla Minacs.

1.4. "Certification and Settlement Approval Orders" means the Orders to be issued by the Courts pursuant to this Settlement, substantially in the form attached hereto as Annex A (the Certification and Settlement Approval Order in Quebec shall be substantially in this form with

necessary modifications for Quebec Court approval), which shall include certification, final approval of the Settlement, notice regarding same, the opt-out procedure, and approval of Class Counsel fees.

1.5. "Claim" means a claim to receive a payment under subparagraphs 3.1 and/or 3.2. A Claim consists of a Claim Form, Proof of Expenditure, Proof of Ownership, and in the case of a claim under subparagraph 3.2, Proof of Internal Leak Repair Expense.

1.6. "Claimant" means a Class Member who submits a Claim.

1.7. "Claim Deadline" means April 30, 2009, unless extended by the Courts.

1.8. "Claim Form" means a document substantially in the form of Annex B hereto, which must be submitted by the Class Member, postmarked or received by the CCC by the Claim Deadline, in order to obtain benefits under the Settlement, as described below.

1.9. "Claims Website" means the website to be established by the Claims Administrator to provide information and Claim Forms to Class Members, which shall be established in both French and English.

1.10. "Claims Administrator" means Crawford Class Action Services, the entity retained to arrange for the dissemination of the Notice of Proposed Settlement Approval Hearing and the Notice of Certification and Settlement Approval in accordance with the Notice Plan and Certification and Settlement Approval Orders, and to administer the Settlement and the claims process set forth in subparagraphs 3.1-3.5 and 4.1-4.21 below, including auditing claims processed by the CCC, finally determining which claims are valid if necessary, and sending Settlement payments to Claimants and such other duties as the Courts may direct.

1.11. "Class" means the Ontario National Class and the Quebec Class.

1.12. "Class Counsel" means Co-Lead Counsel and the following counsel in Canada: Kolthammer Batchelor & Laidlaw LLP; Merchant Law Group; Merchant Law Group LLP; Branch MacMaster; Williams & Company/Williams Law Office; Pollock & Company; Barry Spalding Lawyers/Advocats; Aylward, Chislett & Whitten; Gavras Slone Lenehan; Sack Goldblatt Mitchell LLP; Paul J.D. Mullin, Q.C.; Kapoor, Selnes & Klimm; and any other counsel to the Representative Plaintiffs.

1.13. "Class Member" means a member of the Ontario National Class or the Quebec Class.

1.14. "Co-Lead Counsel" means: Stevensons LLP; Koskie Minsky LLP; and Sylvestre, Fafard, Painchaud Advocats.

1.15. "Consumer" means a person who purchases or leases a vehicle for personal, family, or household use, and not for commercial or business purposes. A Consumer specifically does not include an insurer or other business that has fully or partially indemnified its customer for a Qualifying Repair, including under any policy of insurance, any vehicle warranty plan, any extended warranty plan, or any service plan, whether the insurer or other business is purporting to make a claim for benefits under this Settlement in a subrogated capacity or not.

1.16. "Courts" means the Ontario Superior Court of Justice and the Quebec Superior Court.

1.17. "Date of Initial Vehicle Delivery" means the date on which the original retail purchaser or lessee took physical possession of the vehicle as reported by the delivering dealer to GM. In the event that GM does not have a record of such date, August 31<sup>st</sup> of the model year of the vehicle shall be deemed to be the Date of Initial Vehicle Delivery. GM is to deliver a sworn affidavit estimating the percentage of vehicles for which GM does not have a record of

the date on which the original retail purchaser, or lessee, took physical possession of the vehicle as reported by the delivering dealer.

1.18. "Effective Date" means the latest of the following dates: (i) if no appeal from the Certification and Settlement Approval Orders is filed, the date of expiration of the time for the filing any such appeal; or (ii) if an appeal from the Certification and Settlement Approval Orders is filed, the date upon which any such appeal is finally disposed of and, if applicable, the date of expiration of the time for filing any further appeal or leave to appeal application.

1.19. "Engine Group A Vehicle" means any 1995 through 2003 model year vehicle with a 3.1 litre or 3.4 litre V6 engine that was factory-equipped with Dex-Cool coolant and a nylon/silicone lower intake manifold gasket but excluding all 2003 model year vehicles manufactured after April 9, 2003 (vehicles listed in Annex C).

1.20. "Engine Group A Repair" means any lower intake manifold gasket replacement made on an Engine Group A Vehicle within the earlier of 7 years from the Date of Initial Vehicle Delivery or 240,000 kilometres of use.

1.21. "Engine Group B Vehicle" means any 1995 through 2004 model year vehicle with a 3.8 litre V6 engine (RPO L36) that was factory-equipped with Dex-Cool coolant (vehicles listed in Annex D).

1.22. "Engine Group B Repair" means any replacement of a throttle body gasket, upper intake manifold gasket, lower intake manifold gasket, or intake manifold made on an Engine Group B Vehicle within the earlier of 7 years from the Date of Initial Vehicle Delivery or 240,000 kilometres of use.

1.23. "GM" means General Motors Corporation and General Motors of Canada Limited.

1.24. "GM Authorized Independent Dealers" means an automotive dealer that is a party to the General Motors of Canada Limited Dealer Sales and Service Agreement.

1.25. "GM Counsel" means Borden Ladner Gervais LLP and Fraser Milner Casgrain LLP.

1.26. "Notice of Certification and Settlement Approval" means the notices to be made to the Class of the Certification and Settlement Approval Orders, the opt-out procedure, and the claims procedure under this Settlement, substantially in the form attached hereto as Annex E2 and as set out in the Notice Plan for publication in Canada except in the province of Quebec. The Notice of Certification and Settlement Approval published in Quebec shall be in a substantially similar form with necessary modifications for dissemination in Quebec pursuant to the Notice Plan and modifications for Quebec Court approval.

1.27. "Notice of Proposed Settlement Approval Hearing" means the notice to be made to the Class of the proposed settlement approval hearing, substantially in the form attached hereto as Annex E1 and as set out in the Notice Plan for publication in Canada except in the province of Quebec. The Notice of Proposed Settlement Approval Hearing published in Quebec shall be in a substantially similar form with necessary modifications for dissemination in Quebec pursuant to the Notice Plan and modifications for Quebec Court approval.

1.28. "Notice Plan" means the plan for dissemination of the Notice of Proposed Settlement Approval Hearing and the Notice of Certification and Settlement Approval, substantially as outlined in Annex F hereto. The Parties agree that the Notice Plan is fair, adequate, and is reasonable in the circumstances.

1.29. "Ontario National Class" means all Consumers resident in Canada, other than in the province of Quebec, who own or lease, or who have in the past owned or leased, a



Qualifying Vehicle and who incurred an expense from a Qualifying Repair before October 14, 2008.

1.30. "Opt-Out" means any person who validly and timely requests exclusion, within the Opt-Out Deadline, from the Ontario National Class or the Quebec Class.

1.31. "Opt-Out Deadline" means the date on which requests by Class Members for exclusion from the Ontario National Class and the Quebec Class must be postmarked or received by the Claims Administrator to be valid, which date shall be November 30, 2008.

1.32. "Opt-Out Form" means the form to be completed by a Class Member wishing to be excluded from the Ontario National Class or the Quebec Class, substantially in the form attached hereto as Annex G.

1.33. "Parties" means the Representative Plaintiffs and GM.

1.34. "Proof of Expenditure" means contemporaneous documentary proof of an out-of-pocket expenditure by a Class Member on a Qualifying Repair, to the extent not fully reimbursed under a new vehicle warranty, any extended warranty, any service plan, or goodwill adjustment. In the case of an Engine Group A Repair, Proof of Expenditure must document that the repair was made due to a failed lower intake manifold gasket (and was not associated with a larger repair unrelated to a failed lower intake manifold gasket). In the case of an Engine Group B Repair, Proof of Expenditure must document that the repair was made due to a failed throttle body gasket, upper intake manifold gasket, lower intake manifold gasket, or intake manifold (and was not associated with a larger repair unrelated to a failure of one of those four parts). An acceptable form of proof may include any written statement based on personal knowledge by the person or business that performed the repair, such as a repair invoice or receipt. In the event that contemporaneous documentary proof (i.e. an actual repair invoice or other contemporaneous documentary proof of the repair) is not available, then a Claimant may satisfy

the Proof of Expenditure requirement by submitting: (i) a written statement, based on personal knowledge, from the person or business who made the repair indicating that a copy of the actual repair invoice or other documentary proof of the repair is not available and that the repair qualified as an Engine Group A Repair or Engine Group B Repair as described above, such as in the form substantially as it appears in Annex H, and (ii) proof of payment of the repair. If a Claimant is unable to provide the requisite Proof of Expenditure described above, the Claimant may submit the best available written statement or other documents that the Claimant believes demonstrates Proof of Expenditure, and the Claims Administrator and GM, in the exercise of their joint, reasonable discretion, may under subparagraph 4.13, after a review of all such claims, approve or reject the claim (the type of proof of expenditure described in this sentence shall be hereinafter known as “Best Available Proof of Expenditure”).

1.35. “Proof of Internal Leak Repair Expense” means Proof of Expenditure as defined in subparagraph 1.34 above and where the Proof of Expenditure documentation shows that the expenditure was: (i) over \$1,500; and (ii) due to a diagnosed internal coolant leak. For purposes of this Agreement, an internal coolant leak means a diagnosed coolant leak into the Qualifying Vehicle’s internal engine components, as opposed to an external leak where coolant leaks only out of the vehicle’s engine.

1.36. “Proof of Ownership” means documentary proof that, at the time a Qualifying Repair was performed, the Claimant owned or leased the vehicle on which the Qualifying Repair was performed. An acceptable form of proof includes, but is not limited to, a copy of a vehicle registration record, proof of insurance coverage, title certificate, bill of sale, or lease agreement.

1.37. “Qualifying Repair” means any Engine Group A Repair or Engine Group B Repair.

1.38. “Qualifying Vehicle” means an Engine Group A Vehicle or Engine Group B Vehicle.

1.39. “Quebec Class” means all Consumers resident in Quebec who own or lease, or who have in the past owned or leased, a Qualifying Vehicle and who incurred an expense from a Qualifying Repair before October 14, 2008.

1.40. “Released Claims” means any and all claims, demands, debts, rights, causes of action or liabilities whatsoever, including known and unknown claims, now existing or hereafter arising, in law, equity or otherwise, arising under statutory or common law, or foreign statutory or common law, including, but not limited to, claims arising under consumer protection, consumer fraud, or deceptive trade practices statutes, common law breach of contract claims, statutory or common law fraud or misrepresentation claims, breach of fiduciary duty claims, unjust enrichment claims, waiver of tort claims, constructive trust claims, and whether possessed or asserted directly, indirectly, derivatively, representatively or in any other capacity, and whether or not such claims were or could have been raised or asserted before the courts in the Actions, to the extent any such claims are based upon, arise out of, or relate to, in whole or in part, in any way whatsoever, any Qualifying Repair, but excluding all claims for personal injury.

1.41. “Released Persons” means GM, its subsidiaries, affiliates, associates, general or limited partners or partnerships, GM Authorized Independent Dealers, predecessors, successors, and/or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns or insurers and anyone acting on their behalf, individually and collectively.

1.42. “Repair Expense” means the actual out-of-pocket expense incurred by the Claimant for the Qualifying Repair itself including any applicable taxes. For greater clarity, a Repair Expense is net of any reimbursement made to, or available to, the Claimant pursuant to any new vehicle warranty, any extended warranty, any service plan, or goodwill adjustment.

1.43. “Representative Plaintiffs” means the named plaintiffs in the Actions.

1.44. “Request For Review of Rejected Claim Form” means a form substantially as appears in Annex I hereto.

1.45. “Settlement” means the settlement of the Actions as contemplated by the Agreement.

1.46. “VIN” means vehicle identification number.

1.47. The capitalized defined terms in this Agreement shall have the same meaning in any recital, preamble, amendment, annex, appendix, or schedule to this Agreement.

## **2. EXECUTION DATE**

2.1. This Agreement becomes binding upon execution by the Parties through their respective counsel, subject to the termination and rescission clauses in section 9 below.

## **3. SETTLEMENT CONSIDERATION**

### **A. Claims Reimbursements**

3.1. All Class Members who submit a proper Claim Form, Proof of Expenditure, and Proof of Ownership before the Claim Deadline will be eligible to receive payment from the Claims Administrator according to the following payment schedule (unless the Class Member is eligible to, and opts to, receive a payment pursuant to subparagraph 3.2):

- (a) For Class Members who incurred a Repair Expense within five years of the Date of Initial Vehicle Delivery, an amount equal to the Repair Expense, up to a maximum of \$400.
- (b) For Class Members who incurred a Repair Expense in the sixth year after the Date of Initial Vehicle Delivery, an amount equal to the Repair Expense, up to a maximum of \$100.
- (c) For Class Members who incurred a Repair Expense in the seventh year after the Date of Initial Vehicle Delivery, an amount equal to the Repair Expense, up to a maximum of \$50.

3.2. Any Class Member who is eligible to receive cash payment under subparagraph 3.1 (a), may opt to instead receive 40% of the Repair Expense, up to a maximum of \$800, if the Class Member submits Proof of Internal Leak Repair Expense showing a repair costing over \$1,500 due to a diagnosed internal coolant leak.

3.3. The Settlement shall be the exclusive remedy for all Class Members.

3.4. If a Class Member incurred multiple Repair Expenses, the Class Member may submit multiple Claims, however, each Claim must be supported by a separate Claim Form, Proof of Expenditure, Proof of Ownership, and, in the case of a Claim under subparagraph 3.2, Proof of Internal Leak Repair Expense.

3.5. Claims cannot be assigned or transferred in any way. Subrogated Claims cannot be made. To be valid, Claims must be made and signed by the Class Member who incurred the Repair Expense with the one exception that Claims can be made on behalf of deceased Class Members by the executor, trustee, estate trustee, or administrator of a deceased Class Member's estate. The executor, trustee, estate trustee, or administrator, as the case may be, must complete and sign a statutory declaration on the Claim Form testifying to their capacity to act on behalf

of, and bind, the estate of the Class Member. If that statutory declaration on the Claim Form is completed and signed, any payments made pursuant to subparagraphs 3.1 or 3.2 shall be made to the executor, trustee, estate trustee, or administrator claiming on behalf of the estate of the deceased Class Member, and GM shall not be liable to any beneficiary of the estate with respect to the Claim.

**B. Costs and Fees**

Costs of Claims Administration, Notice and Payments to Class Members

3.6. GM will pay all costs of claims administration, including all fees and disbursements of the Claims Administrator and the CCC.

3.7. GM will pay all costs associated with disseminating the Notice of Proposed Settlement Approval Hearing, Notice of Certification and Settlement Approval and any other notices to the Class in accordance with the Notice Plan and Certification and Settlement Approval Order, but those costs shall not exceed \$200,000 unless otherwise approved by the Courts and agreed by the Parties.

3.8. GM will pay all amounts distributed by the Claims Administrator to Class Members pursuant to subparagraphs 3.1, 3.2, 3.4, and 4.15.

Class Counsel Fees

3.9. GM will pay Class Counsel's fees up to August 28, 2008 in the amount of \$2,520,000.00, plus \$126,000.00 in GST, and disbursements in the amount of \$170,000.00, inclusive of taxes, such amounts to be approved by the Courts on motion by Co-Lead Counsel. Co-Lead Counsel will provide to GM a summary of disbursements incurred by Co-Lead Counsel, as well as back-up documentation for individual disbursements of Co-Lead Counsel greater than \$500 paid to third parties, except pertaining to photocopying, printing, and

electronic research fees. GM will make payment of the amounts set out in this paragraph to Koskie Minsky LLP, in trust, on or before October 29, 2008, to be held in escrow in an interest bearing account until December 16, 2008, unless this agreement is rescinded pursuant to paragraphs 9.1 or 9.2 prior to December 16, 2008. GM shall pay interest, at the rate of five percent (5%) per year from October 29, 2008 until deposited, on any portion of the amounts set out in this paragraph which is not paid to Koskie Minsky LLP by October 29, 2008. In the event that this Agreement is terminated or rescinded in accordance with paragraph 9.1 or 9.2 of this agreement, Koskie Minsky LLP shall return the funds set out above to GM, including interest earned thereon.

3.10. GM shall also pay Class Counsel's fees and disbursements from August 28, 2008 to December 15, 2008, up to a maximum of \$131,250.00 inclusive of taxes. GM shall pay the fees pursuant to this paragraph to Koskie Minsky LLP, in trust within 30 days after Co-Lead Counsel submits the Class Counsel's accounts for the prescribed period. In the event of a dispute between the parties with respect to the fees set out in this paragraph, the parties agree to resolve the dispute pursuant to mediation/arbitration. In the event that this Agreement is terminated or rescinded in accordance with paragraph 9.1 or 9.2 of this agreement, Koskie Minsky LLP shall return the funds set out above to GM, including interest earned thereon.

3.11. GM shall consent to the motion to the Court for fees as provided in paragraph 3.9 and the Parties agree that such fee is reasonable under the circumstances.

3.12. Class Counsel authorize payment as provided in paragraphs 3.9 and 3.10 herein to be made to Koskie Minsky LLP in trust and acknowledge that such payment is in full and final settlement and in satisfaction of any and all claims against GM by Class Counsel for costs, fees, taxes, and disbursements. Further, Class Counsel shall not claim or seek any further award or payment of costs, fees, taxes, and/or disbursements from the Released Persons, the

Parties, or the Class arising from the Actions, similar actions or anything relating to or arising from Settlement.

**C. Release of Claims**

3.13. In consideration of the benefits described above, the Representative Plaintiffs promise, covenant and agree, and each Class Member and the Class shall be deemed to have promised, covenanted and agreed, that, upon the Effective Date, the Representative Plaintiffs and the Class Members, including their affiliates, subsidiaries, associates, general or limited partners or partnerships, predecessors, successors, and/or assigns, including, without limitation, any of their respective present or former officers, directors, trustees, employees, agents, attorneys, representatives, and/or shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors, assigns or insurers, and anyone else acting through them or on their behalf, shall, by operation of the Certification and Settlement Approval Orders, have hereby forever released, waived and discharged the Released Persons from all liability for any and all Released Claims.

3.14. Upon the Effective Date, for the consideration provided for herein and by operation of the Certification and Settlement Approval Orders, the Representative Plaintiffs shall have, and each Class Member and the Class shall be deemed to have, covenanted and agreed that he or she shall not, at any time, institute, cause to be instituted, assist in instituting, permit to be instituted, or continue, through them or on their behalf, any proceeding in any court, in or before any administrative agency, or any other proceeding, against the Released Persons relating in any way to the Released Claims. In the event that any such proceeding is instituted or continued, the Class Member(s) involved shall immediately discontinue the proceeding and shall indemnify and hold harmless the Released Persons from any liability in the proceeding including for any damages awarded, prejudgment interest, postjudgment interest,



costs and disbursements payable to the other parties, and indemnification of the Released Persons for their own legal costs and disbursements on a full indemnity basis.

3.15. Class Counsel undertake and agree not to institute, or provide any advice in relation to, any claim or proceeding, other than the Actions, by anyone against any Released Persons relating in any way to the claims in the Actions or the Released Claims.

3.16. Class Counsel undertake and agree not to be retained by, act for, or provide any advice to, any Opt-Out with respect to the claims in the Actions or the Released Claims.

3.17. No Claimant shall have any claim or cause of action against the Representative Plaintiffs, Class Counsel, the Claims Administrator, GM, or any Released Persons relating to reimbursements to Claimants made substantially in accordance with this Agreement and any further orders of the Courts.

3.18. The sole remedy for default of this Agreement by any Party is an action for breach of this Agreement. Following entry of the Certification and Settlement Approval Order and completion of all obligations and undertakings set forth therein, no default by any Party shall affect the final dismissal of the Actions with prejudice, or the discharge of any of the Released Persons, Class Counsel, Representative Plaintiffs, or Claims Administrator, either individually or collectively as provided for in subparagraphs 3.13-3.17 above.

#### **4. CLAIMS PROCESS**

4.1. The Claims Administrator and the CCC shall establish the Claims Website by the date the Notice of Certification and Settlement Approval is first disseminated. The Claims Website shall be made available in both English and French.

4.2. Claims can be submitted after the Certification and Settlement Approval Orders are issued by the Courts, but it is acknowledged that processing of those claims may not begin until after December 15, 2008.

4.3. Class Members may obtain a blank Claim Form, and any other form contemplated by this Agreement, for completion and submission from the Claims Website or by requesting one to be sent to them from the CCC, the contact details of which will be provided in the Notice of Certification and Settlement Approval.

4.4. Claims will be initially received and processed by the CCC. Claimants shall send Claims to the CCC electronically or in the manner provided for in the Claim Form. Any Claim submitted with the Best Available Proof of Expenditure, as defined in subparagraph 1.34, shall be provided to the Claims Administrator by the CCC to determine the validity of such Claims pursuant to subparagraphs 1.34 and 4.13.

4.5. GM and the CCC have the right, if they reasonably suspect a potentially invalid Claim or fraud, to request additional documentation.

4.6. After giving Claimants a reasonable opportunity of at least 20 days to cure deficient Claims, the CCC shall determine the validity of a Claim within 60 days, except Claims submitted with the Best Available Proof of Expenditure (as defined in subparagraph 1.34) which are to be provided to the Claims Administrator pursuant to subparagraph 4.4 and the validity of which is to be determined by the Claims Administrator and GM in accordance with subparagraphs 1.34 and 4.13 within 60 days of the Claim Deadline. The CCC will record the reasons for the rejection of any Claim.

4.7. CCC staff will direct the Claims Administrator to pay Claims the CCC determines to be valid.

4.8. The CCC will advise any Claimant, whose Claim has been determined by the CCC to be invalid, of the rejection of the Claim and the reasons therefor and shall provide the Claimant at the same time with a copy of the Request for Review of Rejected Claim Form and advise the claimant of its right to have the CCC's decision reviewed pursuant to paragraph 4.9.

4.9. Subject to subparagraphs 4.10 and 4.13 below, any Claimant whose Claim is rejected by the CCC may request that the Claims Administrator review the rejection by submitting a Request For Review of Rejected Claim Form either electronically or in paper form. To be accepted, the Request For Review of Rejected Claim Form must be postmarked or received by the Claims Administrator within 10 days of the Claimant being advised of the rejection by the CCC. The Claims Administrator shall review any such Claim for validity, make a decision in that regard, and advise the Claimant of its decision within 30 days of receipt of the Request for Review of Rejected Claim Form. Before making such a decision the Claims Administrator shall consider the CCC's reasons for rejecting the Claim.

4.10. Notwithstanding subparagraph 4.9 above, if a Claim is rejected by the CCC because the vehicle that is the subject of the Claim is not a Qualifying Vehicle, the Claimant cannot request that the Claims Administrator review the rejection and cannot submit a Request for Review of Rejected Claim Form.

4.11. The Claims Administrator shall have the right, on its own accord, to review and audit any Claims made. The Claims Administrator has the right, if it reasonably suspects a potentially invalid Claim or fraud, to request additional documentation. If, after considering the reasons of the CCC for rejecting a Claim, the Claims Administrator determines that the Claim is valid in accordance with this Agreement, the Claims Administrator has the discretion to pay the Claim.

4.12. Subject to subparagraph 4.13 below, the Claims Administrator's determination of the validity of a Claim is final and not subject to appeal by GM or any Class Member.

4.13. If Claims are submitted with the Best Available Proof of Expenditure (as defined in subparagraph 1.34 above), the CCC shall collect all such claims for adjudication by the Claims Administrator and GM in accordance with subparagraphs 1.34, 4.4, and 4.6 above. The Claims Administrator shall promptly report the results of the adjudication of such Claims to the Claimants. The determination of the validity of any such claim by the Claims Administrator and GM is final and not subject to appeal by any Class Member. A Claimant submitting a Claim with the Best Available Proof of Expenditure may not request the Claims Administrator to review a rejection of the Claim pursuant to subparagraph 4.9 above.

4.14. It is anticipated that reports regarding valid and invalid claims will have to be exchanged by the CCC, GM, the Claims Administrator, and Co-Lead Counsel. The CCC, GM, the Claims Administrator, and Co-Lead Counsel will work together to determine the content and frequency of such reports.

4.15. On a periodic basis to be determined by the Claims Administrator and GM, GM will transfer to the Claims Administrator the funds necessary to pay Claims determined to be valid within the period. The Claims Administrator will then cause cheques for the valid Claims to be issued in the applicable amount specified in subparagraphs 3.1 and 3.2 and sent to the Claimants, or, in the case of a Claim being submitted by the estate of a deceased Class Member, to the persons making the Claim pursuant to subparagraph 3.5. It is anticipated that the Claims Administrator may have to retain the services of an independent contractor to print and deliver the cheques to Claimants, which costs shall be paid by GM.

4.16. In the event that a cheque sent to a Claimant pursuant to subparagraph 4.15 above has not been negotiated by the Claimant within six months of its date, the cheque shall be cancelled, the amount of the cheque will revert to GM, and the Claims Administrator will repay GM the amount of the cheque upon written request from GM.

4.17. Co-Lead Counsel, GM Counsel, and/or GM have the right to view, and to keep copies of, any documentation submitted in connection with a Claim. Co-Lead Counsel, GM Counsel, and/or GM may audit any records kept by the Claims Administrator and the Claims Administrator shall co-operate with any such requests.

4.18. The Claims Administrator will determine any procedural aspect of the claims process not provided for in this Agreement. Where feasible, the Claims Administrator may seek input from the Parties, directly or through their respective counsel, regarding such matters. The Claims Administrator may consult only one Party if it deems this appropriate. The Claims Administrator, GM, and Co-Lead Counsel may also apply to the Courts for directions. The Claims Administrator's determination of any procedural aspect of the claims process not provided for in this Agreement is final and not subject to appeal by GM or any Class Member.

4.19. The Claims Administrator shall be subject to removal by the Courts for cause, on motion, by any of the Parties.

4.20. The Claims Administrator and CCC shall provide all information and communications to Claimants and all others who contact the Claims Administrator and CCC, in French should the Claims Administrator and CCC be requested to do so by the Claimant or any individual contacting the Claims Administrator and CCC in respect of the this settlement.

4.21. The Claims Administrator and the CCC shall make all Annexes referred to in this agreement available in French, where applicable.

## **5. DENIAL OF WRONGDOING OR LIABILITY**

5.1. This Agreement constitutes the resolution of disputed claims, is for settlement purposes only, and shall not be used for any other purpose. GM expressly denies that it has violated any law, breached any agreement or obligation to the Representative Plaintiffs or the Class, or engaged in any wrongdoing with respect to the Representative Plaintiffs or the

Class. GM denies that it is liable to the Representative Plaintiffs or to the Class for any claims, causes of action, costs, expenses, legal fees or damages of any kind relating to Qualifying Repairs. Neither this Agreement nor any actions undertaken by GM in satisfaction of this Agreement shall constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any allegation of fact or law made by the Representative Plaintiffs in the Actions or in any other action or proceeding. Any orders related to class certification entered in the Actions under this Agreement or otherwise shall not constitute, in the Actions or any other proceeding, an admission by GM that the Representative Plaintiffs' claims, or those of any alleged Class Member, are appropriate for class treatment or that any requirement for class certification is otherwise satisfied in the Actions. By entering into this Agreement, GM in no way waives its right to challenge or contest, on any and all grounds, the Plaintiffs' allegations that a class may be certified in the Actions. If this Agreement is terminated and becomes null and void, the class action aspects of the Settlement shall have no further force and effect with respect to any Party and shall not be offered in evidence or used in the Actions or any other proceeding. This Agreement shall not be offered or be admissible in evidence against GM or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms or by GM in defence of any claims brought by the Representative Plaintiffs, the Class or by any Class Members.

5.2. The Parties expect that any reasonable, fair, balanced, and accurate media report of the Settlement will include mention of the points in subparagraph 5.1 above.

## **6. SETTLEMENT APPROVAL**

6.1. The Representative Plaintiffs will apply for a Certification and Settlement Approval Order in the Province of Ontario in *Stewart v. General Motors of Canada Limited* (Ontario Superior Court of Justice, Court File Number 06-CV-310082CP) and in the Province of Québec in *Tsuk v. General Motors of Canada Limited* (Quebec Superior Court, District of

Montreal, Action number 06-000353-066) substantially in the form attached hereto as Annex A (the Certification and Settlement Approval Order in Quebec shall be substantially in this form with necessary modifications for Quebec Court approval), for the purpose of obtaining a national class settlement. Prior to the Certification and Settlement Approval Order being issued in *Tsuk v. General Motors of Canada Limited* (Quebec Superior Court, District of Montreal, Action number 06-000353-066), the action shall be amended to include General Motors Corporation as a defendant.

6.2. Immediately following the issuance of the Certification and Settlement Approval Order by the Courts, Class Counsel will move to dismiss the remaining Actions without costs and with prejudice. Copies of these dismissal Orders shall be served upon GM Counsel.

6.3. Co-Lead Counsel agree, for the purposes of the Courts' approval of the Settlement, to make best efforts to file affidavit evidence in a form satisfactory to GM.

6.4. GM Counsel agree, for the purposes of the Courts' approval of the Settlement, to make best efforts to file affidavit evidence in a form satisfactory to the Representative Plaintiffs.

## **7. NOTICE**

7.1. At least 30 days prior to the hearing date of the motions to obtain the Certification and Settlement Approval Orders, or other period approved by the Courts, the Claims Administrator shall disseminate the Notice of Proposed Settlement Approval Hearing in accordance with the Notice Plan and as approved by the Courts. Such approval from the Courts shall be obtained on a preliminary motion on consent of the Parties.

7.2. After the issuance of the Certification and Settlement Approval Orders, the Claims Administrator shall disseminate the Notice of Certification and Settlement Approval in

accordance with the Notice Plan and the Certification and Settlement Approval Orders.

## **8. OPT-OUT PROCEDURE**

8.1. Class Members wishing to be excluded from the Ontario National Class or from the Québec Class and the Actions shall send a fully completed Opt-Out Form and supporting documentation referenced in the Opt-Out Form, to the Claims Administrator.

8.2. All requests for exclusion from the Ontario National Class or the Québec Class and the Actions shall be deemed untimely and invalid unless postmarked on or before the Opt-Out Deadline.

8.3. All requests for exclusion from the Ontario National Class or the Québec Class and the Actions must include the information in the Opt-Out Form and the required supporting documentation, to be valid.

8.4. By December 5, 2008, the Claims Administrator shall provide GM and Co-Lead Counsel with the number of all Opt-Outs, the pertinent information of the Opt-Outs, and, if requested, any other information it has received relating to the Opt-Outs. GM will then consider exercising its discretion to rescind this Agreement as provided for in subparagraph 9.2 below.

8.5. Opt-Outs will not receive any of the benefits of the Settlement and will not be entitled to participate in any continuation, amendment, or settlement of the Actions.

## **9. RESCISSION AND TERMINATION**

9.1. This Agreement shall, if either GM or the Representative Plaintiffs elect, be null and void and shall have no further force and effect with respect to any party in the Actions in the event that:



- (a) Either of the Courts refuses to approve the Certification and Settlement Approval Orders substantially in the form attached hereto as Annex A (the Certification and Settlement Approval Order in Quebec shall be substantially in this form with necessary modifications for Quebec Court approval);
- (b) Either of the Certification and Settlement Approval Orders, or any of their constituent elements, are reversed, vacated, overturned, set aside or modified in any material way, by one of the Courts or on appeal; or
- (c) This Agreement is not approved or is modified or altered in a material way by either of the Courts.

9.2. If the number of valid Opt-Outs exceeds 1,500, GM shall have the option, in its sole discretion, to rescind this Agreement by providing written notice to Co-Lead Counsel by December 15, 2008.

9.3. If the Agreement is terminated or rescinded,

- (a) a motion shall be made before the Courts, to which all Parties shall consent, for an order setting aside the Certification and Settlement Approval Orders, including setting aside authorization/certification, and the Certification and Settlement Approval Orders shall be null and void and of no further force or effect, and without prejudice to any party;
- (b) each Party and Class Member shall be restored to his, her or its respective position in the litigation as it existed immediately prior to the execution of this Agreement; and

