

**CITATION:** Oberski v. General Motors LLC, 2024 ONSC 4281  
**COURT FILE NO.:** CV-14-502023-00CP  
**DATE:** 20240801

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** EDWARD OBERSKI, AMANDA OBERSKI, and STACEY GREEN, Plaintiffs

**AND:**

GENERAL MOTORS LLC and GENERAL MOTORS OF CANADA LIMITED  
(now known as GENERAL MOTORS OF CANADA COMPANY), Defendants

**BEFORE:** Justice Glustein

**COUNSEL:** *Joel P. Rochon, Pritpal Mann, Megan B. McPhee, and David Endemann*, for the Plaintiffs

*Michael Smith and Peter Douglas*, for the Defendants

**HEARD:** July 30, 2024

**REASONS FOR DECISION**

**NATURE OF THE MOTIONS AND OVERVIEW**

[1] The Plaintiffs bring a motion for approval of (i) the Amended Settlement Agreement dated July 23, 2024 (the “Settlement Agreement”)<sup>1</sup> and (ii) payment of counsel fees in the amount of \$4,397,500 (inclusive of taxes and disbursements). The Plaintiffs seek ancillary relief which I grant and do not address in these reasons as those orders sought are standard and raise no issues which need to be considered by the court.

[2] The class action arises from an alleged defect in automobile ignition switches designed and manufactured by the defendants (collectively referred to as “GM” or the “Defendants”) from 1997 to 2014. This defect caused the ignition switches to move from the “on” to the “accessory” or “off” position, potentially while the vehicle was in motion, resulting in a loss of power steering, power braking, and potentially air bags (collectively, the “Defects”). The Plaintiffs allege GM knew of these Defects as early as 2002 but did not begin recalling them until 2014 (collectively, the “Recalls”). GM denies all allegations.

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<sup>1</sup> Any defined term not set out in these reasons is defined as set out in the Settlement Agreement which is attached as an exhibit to my order approving the relief sought.

[3] After extensive mediation and negotiation, the parties have agreed that GM will pay \$12 million (the “Settlement Fund Amount”) in full and final settlement of all claims raised in the class action.

[4] By separate mediation and negotiations, the parties agreed that GM will pay Plaintiffs’ class counsel the total amount of \$4,397,500 (inclusive of taxes and disbursements), to be allocated by Co-Lead Counsel (the “Plaintiffs’ Counsel Fee Amount”).

[5] The Settlement Fund Amount and the Plaintiffs’ Counsel Fee Amount are separate payments and are both incorporated into the Settlement Agreement.

[6] At the hearing, I approved the relief sought and advised counsel that I would deliver reasons to follow.

## **FACTS**

[7] The facts related to the background and settlement of the present class action and the related actions across Canada are not in dispute. I set out *verbatim* the facts as stated in the plaintiffs’ factum (references omitted).

### **a) Background**

[8] This motion for settlement approval is brought within the following three proceedings (collectively referred to as the “Actions”):

- a) the action in the Ontario Superior Court of Justice bearing Court File No. CV-14-502023-CP titled *Oberski et al. v. General Motors LLC et al.* (the “Ontario Action”);
- b) the action in the Superior Court of Québec bearing Court File No. 500-06-000687-141 titled *Michael Gagnon v. General Motors of Canada et al.*; and
- c) the action in the Superior Court of Québec bearing Court File No. 500-06-000729-158 titled *Michael Gagnon v. General Motors of Canada et al.*

(the actions in the Superior Court of Québec are collectively referred to as the “Quebec Actions”).

[9] The Ontario Action was commenced on April 11, 2014, in Toronto. Around the same time, three other proposed class actions were commenced in Ontario relating to the same Recalls and Defects. Following a year of carriage discussions, the actions were consolidated into the Ontario Action by order of Justice Perell dated October 11, 2016. Justice Perell’s order also appointed RG [Rochon Genova LLP] and KSM [Kim Spencer McPhee Barristers P.C.] as Co-Lead Counsel, and LMS Lawyers LLP, Sutts Strosberg LLP, McKenzie Lake Lawyers LLP and Merchant Law Group LLP were named as Class Counsel in the Ontario Action.

[10] A number of parallel actions were commenced across the country (the “Related Actions”), all of which are subject to this settlement approval motion. These include parallel actions commenced in Windsor, which were consolidated in the Ontario Action in 2017, and the two Quebec Actions, which were judicially suspended in 2016 pending the outcome of the Ontario and American proceedings.

**b) Subject of the Action**

[11] Beginning in or about February 2014, the Defendants began recalling Subject Vehicles affected by the Defects. Eight recalls were made on Subject Vehicles between February 10, 2014 and July 3, 2014.

[12] The Plaintiffs allege that the Subject Vehicles contained improperly designed and manufactured ignition switches and electronic modules, which were prone to move from the “run” position to the “accessory” or “off” position while the Subject Vehicles were in motion and use. This resulted in a loss of the Subject Vehicle’s electrical power, as well as the turning off of the engine and the disabling of the airbags, power steering and the power brakes. Furthermore, when the ignition moved to the “off” position, the Subject Vehicles’ sensing and diagnostic modules would shut off critical vehicle systems, including airbags, even if the Subject Vehicle was still moving at high speed.

[13] The Plaintiffs allege that these Defects rendered the Subject Vehicles inherently dangerous, and that these dangerous design flaws caused a multitude of very serious and life-threatening injuries, and in some cases death. The Plaintiffs also allege that the Defendants knew of these Defects as early as 2002, but did not inform regulatory authorities, the Class Members or the general public, or issue a recall, until February 2014.

[14] The Plaintiffs initially brought the action on behalf of three proposed classes: those who had sustained injuries or death while operating or being transported in a Subject Vehicle (the “Injury Class”); family members with standing to advance derivative claims under the applicable provincial legislation (the “Family Class”); and those who had suffered economic loss caused by the Defects (the “Owner/Lessee Class”).

**c) Parallel U.S. Litigation and Settlement**

[15] Parallel pure economic loss claims were filed in the United States in 2014, and were litigated in a multi-district litigation matter in the United States District Court for the Southern District of New York (*In re: General Motors LLC Ignition Switch*, No. 14-MDL-2543 (JMD)). These economic loss claims arose out of the same Defects in the Canadian actions, along with an additional defect regarding side airbags not part of the Canadian actions. The U.S. action involved over 14.1 million vehicles, and was resolved via a nationwide settlement of USD \$121,000,000, or approximately USD \$8.53 per Subject Vehicle in that action.

**d) Procedural History**

[16] Following resolution of carriage, the Plaintiffs served the Defendants a Request to Admit and an Amended Request to Admit on November 8, 2017, and January 22, 2018, respectively. On February 12, 2018, the Defendants responded to both Requests to Admit and admitted:

- a) many of the Subject Vehicles had low-torque ignition switches that could move out of the “run” position, and that if the movement occurred, the driver would lose power steering and power braking; and
- b) if a collision occurs while the switch is in the “off” position, the vehicle’s safety airbags may fail to deploy.

[17] On January 18, 2018, Co-Lead Counsel sought and subsequently obtained funding for the Ontario Action from the Class Proceedings Fund. The Fund has a first charge on the Net Settlement Fund and is entitled to recover the costs of any disbursements it has paid and a 10% levy to the net amounts awarded to eligible Ontario/National Settlement Class members.

[18] On June 29, 2020, the Plaintiffs in the Ontario Action served their certification record in anticipation of a contested certification motion. The four-volume motion record included a Second Fresh As Amended Statement of Claim, two expert reports (one regarding liability and one regarding damages), affidavits from the three proposed representative plaintiffs, and a lengthy solicitor’s affidavit, attaching various documents Co-Lead Counsel had obtained from, among other sources, the U.S. regulatory investigations and the U.S. litigation.

**e) The Economic Loss Settlement**

[19] Concurrently with steps to advance the litigation, Co-Lead Counsel and Defendants’ counsel periodically canvassed possibilities for resolving the various actions. Informal steps began shortly after the Plaintiffs delivered their certification motion record. Following initial discussions in around October 2020, the parties engaged former Supreme Court of Canada Justice Thomas Cromwell for the purpose of mediating settlement of the economic loss claims. From December 2020 until March 2021, the parties engaged in numerous pre-mediation calls and caucuses, and exchanged mediation materials.

[20] Following the first formal mediation session on March 26, 2021, the Parties agreed to pause mediation for the economic loss claims and to instead focus on mediating claims for personal injury and fatalities. The parties engaged U.S. mediator Daniel J. Balhoff, who had previously served as mediator and Court-appointed Special Master to resolve the American personal injury claims. Mediation sessions were held on November 10, 2021, and on May 31, 2023, and the Parties ultimately settled those personal injury claims without prejudicing the rights of other class members to pursue individual litigation over their personal injuries.

[21] Counsel resumed mediation of the economic loss claims with Justice Cromwell on December 7, 2021. Multiple mediation sessions culminated in a successful session in mid-March 2022, where the Parties agreed to the final proposed settlement conditions and term sheet. These

terms were ultimately memorialized in the Settlement Agreement, which provides for a Settlement Fund Amount of CAD \$12,000,000.00, roughly CAD \$9.29 per Subject Vehicle.

[22] After agreement on the quantum of the Settlement Fund Amount for payment of individual Claims and the execution of the term sheet, the Parties began negotiations to resolve the quantum the Defendants would pay for plaintiffs' counsels' fees and disbursements. This involved further mediation before Justice Cromwell, and informal negotiations between the parties. The parties ultimately agreed, subject to approval of the courts in Quebec and Ontario, on a Plaintiffs' Counsel Fee Amount of \$4,397,000.00, inclusive of fees, expenses, costs, disbursements, and associated taxes, all of which is to be paid by GM separately from and in addition to the \$12 million Settlement Fund Amount to compensate any and all plaintiffs' counsel across the country.

**f) Certification and Authorization for Settlement Purposes**

[23] By Order dated January 16, 2024, this Court certified the Ontario Action for settlement purposes with respect to the Plaintiffs' economic loss allegations. This Order also discontinued all class claims advanced on behalf of the Injury and Family Classes arising from a motor vehicle accident involving a Subject Vehicle. These claims were settled separately on behalf of those class members with viable personal injury and/or property damage claims.

[24] In May 2024, the Quebec Actions were authorized for settlement purposes, with the Notice approved, and an Opt-Out/Objection Deadline set for July 19, 2024 (the "Québec Actions Authorization Notice Order"). The Ontario Certification Order was then amended to align with the Québec Actions Authorization Notice Order (the "Ontario Action Certification Notice Order"), and with the Quebec Actions Notice Order, the "Certification/Authorization Notice Orders".

[25] The Ontario Action Certification Notice certified the following National Settlement Class:

All Persons resident in Canada other than Excluded Persons and other than Persons whose Subject Vehicles are identified based on reasonably available information from GM as having been first retail sold in Québec who, at any time on or before the Recall Announcement Date of the Recall(s) applicable to their Subject Vehicle(s), owned, purchased, and/or leased a Subject Vehicle in any of the provinces/territories in Canada.

[26] The Québec Actions Authorization Notice Order authorized the following Québec Settlement Class:

All Persons resident in Canada other than Excluded Persons who, at any time on or before the Recall Announcement Date of the Recall(s) applicable to their Subject Vehicle(s), owned, purchased, and/or leased a Subject Vehicle in any of the provinces/territories in Canada and whose Subject Vehicles are identified

based on reasonably available information from GM as **having been first retail sold in Quebec**. [Emphasis added].

[27] The Certification/Authorization Notice Orders certified/authorized the following four Subclasses:

Settlement Class Members who own(ed), purchased, and/or lease(d) a Subject Vehicle covered by the **Delta Ignition Switch Recall** (the “Delta Ignition Switch Subclass”).

Settlement Class Members who own(ed), purchased, and/or lease(d) a Subject Vehicle covered by the **Key Rotation Recall** (the “Key Rotation Subclass”).

Settlement Class Members who own(ed), purchased, and/or lease(d) a Subject Vehicle covered by the **Camaro Knee-Key Recall** (the “Camaro Knee-Key Subclass”); and

Settlement Class Members who own(ed), purchased, and/or lease(d) a Subject Vehicle covered by the **Electric Power Steering Recall** (the “Electric Power Steering Subclass”).

[28] The Ontario Action Certification Notice Orders certified the following Common Issue:

Did any of the Defendants owe a duty of care to National Settlement Class members and if so, what was the standard of care?

[29] The Québec Actions Authorization Notice Order authorized the following Common Issue:

Are the defendants liable for a defect in the Subject Vehicles to the Québec Settlement Class Members?

[30] The Certification/Authorization Notice Program commenced on May 20, 2024 and provided direct and general notice to Settlement Class Members through emails, press release and newspaper publications. In total, direct and media notice reached over 80% of the Class. As of the date of this [hearing], there have been no Objection requests and only six Opt-Out requests.

**g) Settlement Agreement**

**i) Criteria for Eligibility and the Claims Program**

[31] To receive compensations under the Settlement Agreement, Settlement Class Members must, electronically or through paper mail, submit a Claim Form:

a) Confirming they are not claiming on behalf of Excluded Persons;

- b) Providing the personal or business name under which the Subject Vehicle was owned or leased, along with their contact information and address;
- c) Providing the VIN and make, model and year of the Subject Vehicle for which they are claiming compensation (only one claim is allowed per Subject Vehicle);
- d) Confirming whether they are current or former owners or lessees of the Subject Vehicles, including the dates upon which the Subject Vehicle was leased or purchased and when the lease was terminated or the vehicle was sold (if applicable);
- e) Confirming either
  - i) that the Subject Vehicle was repaired pursuant to a Recall, or the Subject Vehicle will be repaired pursuant to a Recall before the Final Recall Repair Date; or
  - ii) they no longer have possession of the Subject Vehicle.

**h) Formula for the Calculation of Settlement Benefits**

[32] Based on GM's best available sales and distribution data for all Subject Vehicles destined for sale in Canada, 80.24% of the Net Settlement Amount will be attributed to the settlement of the Ontario Action and 19.76% of the Net Settlement Amount will be attributed to the settlement of the Quebec Actions. This allocation between the Ontario Action, which extends to all Class Members in all jurisdictions except Quebec, and the Quebec Actions is based on the GM's best data on the sales and distribution destinations of the Subject Vehicles.

[33] As there are four Subclasses, four Defects, and various Recalls, the benefits available under the Settlement vary based on the applicable Recalls and Defects for the relevant Subject Vehicle. The allocations of the Net Settlement Amount are based on the relative strength of the liability position of each Subclass.

[34] The Delta Ignition Switch Class Members will receive twice (2x) the amount paid to each Eligible Claim as compared to the members of the Camaro Knee-Key and Electric Power Steering Subclasses. The Key Rotation Class Members shall receive one-and-a-half times (1.5x) the amount paid to each Eligible Claim by members of the Camaro Knee-Key and the Electric Power Steering Subclasses.

[35] The Settlement Agreement sets out that the settlement amounts for each Subclass and Class Member shall be calculated in accordance with the following mathematical models:

- a) Base Payment Amount: the Net Settlement Amount is divided by the number of Eligible Claims, with the Eligible Claims that fall *both* in the Delta Ignition Switch Subclass and the Electric Power Steering Subclass being counted twice;

- b) Adjusted Base Payment Amount: the Base Payment Amount is multiplied by:
- i) a factor of two (2) for the Eligible Claims in the Delta Ignition Switch sub-Class;
  - ii) a factor of one-and-a-half (1.5) for the Eligible Claims in the Key Rotation sub-Class;
  - iii) a factor of one (1) for the Eligible Claims in the Camaro Knee-Key and Electric Power Steering sub-classes;
- c) Total Value of the Eligible Claims for the Subclasses: the Adjusted Base Payment Amount is multiplied by the number of Eligible Claims for that sub-Class;
- d) The Total Value of the Eligible Claims for each Subclass is totaled so that a percentage can be assigned to the Total Value of the Eligible Claims for each Subclass;
- e) Prorated Value of Eligible Claims for each Subclass: Each Subclass's percentage is applied to the Net Settlement Amount; and
- f) Final Base Payment Amount: the Prorated Value for each Subclass is divided by the number of Eligible Claims for that Subclass.
- i) Administrative Expenses**

[36] The Settlement Fund is separate and apart from the fund for Plaintiffs' Counsel Fees. The only charges to the Settlement Fund are the Administrative Expense payable to JND and taxes on interest earned. JND has estimated the range of its fees and expenses, based on take up rates between 5-15% and a class size of approximately 1.3 million, to be \$1,487,087 and \$2,066,209. The payment of Administrative Expenses will be the only payment JND receives in relation to the administration of the Notice Program and the Claims Program.

**ii) Net Settlement Benefits by Subclass and take-up rate**

[37] Based on the expected Administrative Expenses for a 5%, 10%, or 15% take-up rate and the above calculations for the Settlement Class Member payments, the expected payment amount that will be provided to Settlement Class Members in each Subclass is set out in the table below:



Subclass	Estimated Final Base Payment Amount (5% take-up)	Estimated Final Base Payment Amount (10% take-up)	Estimated Final Base Payment Amount (15% take-up)
Delta Ignition Switch	\$195.48	\$95.12	\$61.60
Key Rotation	\$146.61	\$71.34	\$46.20
Camaro Knee-Key	\$97.74	\$47.56	\$30.80
Electric Power Steering	\$97.74	\$47.56	\$30.80

[38] For the National Settlement Class Members, the Class Proceedings Fund levy will be deducted from each of the above Final Base Payment Amounts, pursuant to section 10(3)(b) of O. Reg. 771.92.

#### **PLAINTIFFS' COUNSEL FEES, DISBURSEMENTS, EXPENSES, COSTS, and APPLICABLE TAXES**

[39] The requested \$4,397,500.00 for the Plaintiffs' Counsel Fee Amount represents approximately a 19.26%<sup>2</sup> contingency fee (once disbursements are deducted).

[40] In relation to Co-Lead Counsel's fees and disbursements, RG has incurred fees of approximately **\$1,097,077.26** (inclusive of HST) and disbursements of approximately **\$245,080.96** (inclusive of HST) totalling **\$1,342,158.22**. KSM has incurred fees (inclusive of HST) of approximately **\$860,057.13** and disbursements (inclusive of HST) of approximately **\$41,747.21**, totalling **\$901,804.34**.

[41] As of April 2022, Sutts Strosberg LLP had incurred fees of approximately **\$621,720** and disbursements of approximately **\$357,903**, totalling **\$979,623** (inclusive of HST). McKenzie Lake Lawyers LLP incurred fees of approximately **\$167,437** and disbursements of **\$21,312**, totalling **\$188,749**.

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<sup>2</sup> At the hearing, counsel provided a revised calculation from the 20.5% amount set out in their factum.

[42] For ease reference, below is a table setting out the total amount of fees and disbursements incurred by Co-Lead Counsel as well as Sutts Strosberg LLP and McKenzie Lake Lawyers LLP:

	<b>Fees</b>	<b>Disbursements</b>	<b>Total</b>
RG	\$1,097,077.26	\$245,080.96	<b>\$1,342,158.22</b>
KSM	\$860,057.13	\$41,747.21	<b>\$901,804.34</b>
Sutts Strosberg LLP	\$621,720 (as of April 2022)	\$357,903 (as of April 2022)	<b>\$979,623</b>
McKenzie Lake Lawyers LLP	\$167,437 (as of April 2022)	\$21,312 (as of April 2022)	<b>\$188,749</b>
<b>Total:</b>	<b>\$2,746,291.39</b>	<b>\$666,043.17</b>	<b>\$3,412,334.56</b>

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[43] When executing the term sheet, the Parties anticipated that Co-Lead Counsel would undertake significant further work to complete the formal Settlement Agreement and to bring this action to the settlement approval stage. Co-Lead Counsel has, in fact, incurred fees for this time, and will continue to incur fees throughout the claims process under the Settlement Agreement. In this context, the requested Plaintiffs' Counsel Fee Amount represents a premium of approximately \$985,165.44 on the fees and disbursements, plus taxes, actually incurred by Co-Lead and Actions Counsel.

[44] However, any premium will dissipate once the Plaintiffs' Counsel Fee Amount is shared amongst all plaintiffs' counsel in the Action and Related Actions, as is required by the Settlement Agreement.

## **ISSUES**

[45] I first address the approval of the Settlement Agreement. I then consider approval of counsel fees.

### *Settlement Agreement*

[46] I first review the applicable law and then apply the law to the present case.

### The applicable law

[47] The principles governing approval of a settlement in a class action are settled. I summarize those principles as set out in the plaintiffs' factum:

- (i) “[T]here is an overriding public interest in favour of settlement. This policy promotes the interests of litigants generally by saving them the expense of trial of disputed issues, and it reduces the strain upon an already overburdened provincial court system”: *Dabbs v. Sun Life Assurance Co. of Canada*, [1998] O.J. No. 1598 at para. 14 (Gen. Div.), citing *Sparling v. Southam Inc.* (1988), 66 O.R. (2d) 225 at 230-31 (H.C.J.).
- (ii) A proposed settlement “must fall within a zone of reasonableness”, which “is an objective standard” that varies “depending on the subject matter of the litigation and the nature of the damages for which the settlement is to provide compensation”: *Des-Rosiers v. Takata Corporation*, 2020 ONSC 8043, at para. 28.
- (iii) The settlement need not be perfect nor must it treat all class members equally, so long as it is fair and reasonable: *Rizzi v. Handa*, 2021 ONSC 1004 at para. 18.
- (iv) In determining whether a settlement is “reasonable”, the court takes into account what might have been expected had the case proceeded to trial, without making findings of fact on the merits of the litigation: *Vell v. Mattel Canada Inc.*, 2016 ONSC 5789 at para. 28.

[48] Relevant factors which the court can consider in determining whether a proposed settlement is reasonable include:

- (i) The likelihood of recovery or success;
- (ii) The amount and nature of the discovery, evidence or investigation;
- (iii) The settlement terms;
- (iv) The recommendation and experience of counsel;
- (v) The future expenses and likely litigation risk;
- (vi) The recommendation of neutral parties;
- (vii) The number of objectors and the nature of the objections;
- (viii) Whether there was arms-length bargaining;
- (ix) The involvement of the representative plaintiff; and
- (x) Positions taken by the parties during the negotiation: *Rizzi* at para. 17; *Maggisano v. Skyservice Airlines Inc.*, 2010 ONSC 7169, at para. 19.

[49] I now apply the above law to the facts of the present case.

## Analysis

[50] I rely on the following factors to find that the Settlement Agreement is reasonable:

- (i) Following the decision in *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, [2020] 3 S.C.R. 504 (released in November 2020 shortly after the plaintiffs served their certification record), there was significant doubt if any damages could be awarded for alleged product defects once the Subject Vehicles were recalled. When defective products are subject to voluntary recalls, there are “very high litigation risks” that support a settlement: *Hamilton v. Toyota Motor Sales, USA, Inc.*, 2014 ONSC 785, at para. 49.
- (ii) There was a significant risk that no liability could be found against a solvent defendant. General Motors Corporation (“GMC”) designed, manufactured and assembled approximately 88% of the vehicles at issue, but was rendered insolvent as a result of restructuring in or around 2008. While General Motors of Canada Limited was a subsidiary of GMC, the court in *Gregorio v. Intrans-Corp.*, (1994), 18 O.R. (3d) 527 (C.A.), held that a subsidiary corporation could not be held liable for its parent corporation’s manufacturing defects unless the subsidiary is “nothing more than a conduit used by the parent to avoid liability” for “conduct akin to fraud”. It would have been difficult for the plaintiffs to meet that standard.
- (iii) It would also have been difficult for the plaintiffs to hold General Motors LLC liable as a successor corporation who acquired the assets of GMC, since the law governing the circumstances in which such liability arises is “unsettled” and only applies in “limited circumstances”: *Talbot v. Nourse et al*, 2018 ONSC 1061, 81 B.L.R. (5th) 145, at para. 141.
- (iv) The proposed settlement terms are consistent with recovery in the US litigation.
- (v) While economic loss recovery in the present case is low on a per vehicle basis (as it was in the US litigation), given the low expected take up rate, each purchaser will obtain some substantive relief for economic loss. Those purchasers who suffered injury (and their family members) either obtained a settlement reflecting those losses in the actions discontinued from the present class action, or provided no release of individual personal injury claims.
- (v) Through a Cooperative Agreement with Delphi Automotive, plaintiffs’ counsel conducted an extensive review of the evidence regarding the testing, research, manufacture, and subsequent modification of the ignition switches at issue.
- (vi) The plaintiffs retained two experts who prepared reports. The experts concluded that (a) the Subject Vehicles contained the Defects (from Dr. Stevick) and (b) class members were not fully compensated for their repair costs and consequential damages (from Mr. Stockton).

- (vii) Documents concerning US bankruptcy proceedings for GMC were thoroughly reviewed.
- (viii) Press releases and testimony before the US Congress about the Defects and Recalls were thoroughly reviewed.
- (ix) The Plaintiffs also delivered Requests to Admit that resulted in the Defendants admitting that many of the Subject Vehicles had low-torque ignition switches that could move out of the “run” position, and that if the movement occurred, the driver loses the assistance of power steering and power brakes. The Defendants also admitted that if a collision occurs while the switch is in the “off” position, the vehicle’s safety airbags may fail to deploy.
- (x) Expedited recovery is provided on settlement, avoiding a contested certification motion, a lengthy discovery process (even if certified), and a common issues trial, all with various appeal rights. It would only be after this process that individual class members could make individual claims, which might raise additional hurdles and result in additional expenses to prove individual damages.
- (xi) There are no objectors to the Settlement Agreement. There were only six Opt-Outs from the National Settlement Class Members and only one Opt-Out from the Quebec Settlement Class Members, which is particularly relevant given the extensive direct and public notice to class members.
- (xii) The Settlement Agreement was recommended by experienced counsel and entered into after extensive negotiations. There is a strong initial presumption of fairness when a proposed class settlement, negotiated at arm’s length by experienced class counsel, is presented to the court for approval: *Ainslie v. Afexa Life Sciences Inc.*, 2010 ONSC 4294 at para. 31; *Serhan v. Johnson & Johnson*, 2011 ONSC 128, 79 C.C.L.T. (3d) 272 at paras. 55–56.
- (xiii) The representative plaintiff, Ms. Green, has been involved in this litigation from its commencement. She has reviewed the Settlement Agreement with counsel and believes the settlement is in the best interests of the class,

[51] For the above reasons, I find that the Settlement Agreement is fair and reasonable.

#### *Counsel fees*

[52] I first review the applicable law and then apply the law to the present case.

#### The applicable law

[53] I rely on the following settled legal principles to determine whether counsel fees for a class action are fair and reasonable:

- (i) To be fair and reasonable, the fee must provide “access to justice for class members, and at the same time provide an economic incentive to lawyers to take on a class action and to strive for a successful result for the class”: *Rizzi* at para. 24.
- (ii) Contingency fee retainer agreements are presumptively valid, provided they are “fully understood and accepted by the representative plaintiffs”: *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 at para. 8.
- (iii) Courts have considered one-third contingency fees to be “standard”: *Abdulrahim v. Air France*, 2011 ONSC 512 at para. 13; *Cannon*, at para. 11.

### Analysis

[54] I find that the counsel fee sought is reasonable. I rely on the following factors:

- (i) The Plaintiffs’ Counsel Fee Amount was negotiated after the term sheet was signed, at a separate mediation facilitated by Justice Cromwell. It is a separate fund payable from the Defendants directly to Co-Lead Counsel, to be allocated among plaintiffs’ counsel thereafter. The Plaintiffs’ Counsel Fee Amount will have no bearing on the amount available to compensate Eligible Claimants. Accordingly, no concerns arise as to the ability of the Class to pay the amount.
- (ii) While the Plaintiffs’ Counsel Fee Amount is not a contingency fee insofar as it is not payable from the compensation to class members, it represents approximately 19.26% of the total recovery to be paid by the Defendants (once disbursements and taxes are deducted). That amount is well within the presumptive validity.
- (iii) The Plaintiffs’ Counsel Fee Amount represents a 1.22 multiplier of the time expended and disbursements, which is a modest amount and one which will decrease with the additional work required to complete the settlement and distribution.
- (iv) Class Counsel incurred significant risks in bringing the litigation. None of the analogous US litigation, on the merits, against GM resulted in a finding of liability. There was serious risk throughout this litigation that this action would not be certified because (a) the costs of repair and consequential damages claims would be found to be “pure economic loss claims” and (b) the personal injury claims would be found to be replete with individual issues that made individual actions preferable to a class proceeding. Further, recovery (even if the action was certified and successful at trial) would be at risk given the insolvency of GMC.
- (v) Co-Lead Counsel spent extensive time and effort preparing material for certification, attending meetings and conferences in Canada and the US, working with experts, preparing for and attending mediation in Canada and the US, and

drafting and reviewing the settlement agreement and the materials for settlement approval.

- (vi) The negotiations that culminated in the Settlement Agreement took two years, and included negotiations in Chicago in relation to the personal injury claims of certain Class Members.
- (vii) Plaintiffs' Counsel will continue to spend additional time and incur further expenses throughout the Claims Program to (a) ensure the Class Members receive the necessary assistance to successfully file claims, (b) monitor the implementation of the Settlement Agreement, as well as the Approval Notice Program, and (c) address any questions or issues raised by the Settlement Administrator during the administration of the Claims Program.
- (viii) The Representative Plaintiffs' knowingly, and on a fully informed basis, executed contingency fee retainers, and Ms. Green has filed an affidavit in support of Plaintiffs' Counsel's request for the Plaintiffs' Counsel Fee Amount.

[55] For the above reasons, I find that the Plaintiffs' Counsel Fee Amount is fair and reasonable.

## **ORDER**

[56] I grant the order approving the Settlement Agreement and awarding the Plaintiffs' Counsel Fee Amount. I grant the ancillary relief sought.

[57] Following the hearing, counsel provided the court with a revised order to reflect minor changes arising from submissions at the hearing. I approve that order, which I have signed concurrent with these reasons.

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GLUSTEIN J.

**Date:** 20240801

**CITATION:** Oberski v. General Motors LLC, 2024 ONSC 4281  
**COURT FILE NO.:** CV-14-502023-00CP  
**DATE:** 20240801

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

EDWARD OBERSKI, AMANDA OBERSKI, and  
STACEY GREEN

Plaintiffs

**AND:**

GENERAL MOTORS LLC and GENERAL MOTORS  
OF CANADA LIMITED (now known as GENERAL  
MOTORS OF CANADA COMPANY)

Defendants

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**REASONS FOR DECISION**

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Glustein J.

**Released:** August 1, 2024