

DONOVAN SEARLES, LLC  
Michael D. Donovan  
Attorney I.D. No. 51895  
David A. Searles  
Attorney I.D. No. 21471  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103  
(215) 732-6067

THIS IS NOT AN ARBITRATION CASE.  
ASSESSMENT OF DAMAGES HEARING  
IS REQUIRED.

JUST FILED  
ATTEST  
JAN 25 2006  
KIMBERLY PRO. PROTHY

Attorneys for Plaintiff and the Class

**Sher Family Ltd. Partnership by** :  
**Robert B. Sher, Jr.** :  
**1000 Hollingsworth Drive** :  
**Phoenixville, PA 19460,** :  
**Plaintiff,** :  
: :  
**and** :  
: :  
**General Motors Corporation** :  
**c/o CT Corporation Systems** :  
**1515 Market Street, Suite 1210** :  
**Philadelphia, PA 19102,** :  
**Defendant.** :

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY**

**JANUARY TERM 2006**

**No.: 002865**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

**NOTICE TO DEFEND**

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within 20 days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERENCE SERVICE  
One Reading Center  
Philadelphia, PA 19107  
Telephone: (215) 238-1701

**AVISO**

Le han demandado & usted en la corte. Si usted quiere defenderse de estas de mandas expuestas en las paginas siguientes, usted tiene veinte 30 dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escritz sus defensas o sus objeciones a las demandas en en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede demandante y reguiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGDO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME FOR TELEFONO A LA OFICINO CUYA DIRECCION SE AVERIGUAR DONDE SE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DE REFERENCE LEGAL  
One Reading Center  
Filadelfia, PA 19107  
Telefono: (215) 238-1701

**DONOVAN SEARLES, LLC**  
Michael D. Donovan  
Attorney I.D. No. 51895  
David A. Searles  
Attorney I.D. No. 21471  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103  
(215) 732-6067

**Francis J. Farina**  
Attorney I.D. No. 48736  
LAW OFFICES OF FRANCIS J. FARINA  
577 Gregory Lane  
Devon, PA 19333  
(610) 695-9002

Attorneys for Plaintiff and the Class

<b>Sher Family Ltd. Partnership by</b>	:	<b>COURT OF COMMON PLEAS</b>
<b>Robert B. Sher, Jr.</b>	:	<b>PHILADELPHIA COUNTY</b>
<b>1000 Hollingsworth Drive, P.O. Box 430</b>	:	
<b>Phoenixville, PA 19460,</b>	:	<b>JANUARY TERM 2006</b>
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>No. 002865</b>
	:	
<b>General Motors Corporation</b>	:	<b>JURY TRIAL DEMANDED</b>
<b>c/o CT Corporation Systems</b>	:	
<b>1515 Market Street, Suite 1210</b>	:	<b>CLASS ACTION COMPLAINT</b>
<b>Philadelphia, PA 19102,</b>	:	
<b>Defendant.</b>	:	
	:	
	:	

Plaintiff, Sher Family Limited Partnership by its General Partner, Robert B. Sher, Jr., brings this class action pursuant to Rule 1701 *et seq.* of the Pennsylvania Rules of Civil Procedure, individually and on behalf all others similarly situated, and alleges the following:

**INTRODUCTION**

1. This class action seeks damages, injunctive and declaratory relief on behalf of a class of all persons who purchased or leased a 1995 through 2003 General Motors vehicle (the

“Vehicle”) with a 3800 series engine (VN K-RPO L36), including, but not limited to the following:

- Buick Riviera
- Buick LeSabre, Buick Park Avenue
- Buick Regal
- Chevrolet Lumina, Chevrolet Monte Carlo
- Oldsmobile Ninety-Eight
- Oldsmobile Eighty-Eight
- Oldsmobile Intrique
- Pontiac Bonneville
- Pontiac Grand Prix

2. Through a common and uniform course of conduct, Defendant General Motors Corporation (“GM”) manufactured, supplied, promoted, sold and leased Vehicles when it knew or should have known that these Vehicles equipped with the 3800 series engine (VN K-RPO L36), (“3800 engine”) each had a premature and/or abnormal upper intake manifold wear defect. This defect manifests itself in premature and/or abnormal wear that leads to loss of engine coolant; excessive engine coolant consumption; and/or an engine coolant leak near or under the throttle body area of the upper intake manifold, all of which can lead to premature wear to the engine and/or other internal engine problems.

3. Through a common and uniform course of conduct, Defendant GM, acting individually and collectively through its agents and dealers, failed to adequately disclose to the consuming public the fact that its Vehicles equipped with 3800 series engine had a premature and/or abnormal upper intake manifold wear defect that leads to loss of engine coolant; excessive engine coolant consumption; and/or an engine coolant leak near or under the throttle body area of the upper intake manifold.

4. Furthermore, through a common and uniform course of conduct, Defendant GM failed to honor both federally mandated and voluntarily offered warranties that would have

required them to repair or correct, at no cost to the consuming public, the defective part (the plenum) which wears prematurely and/or abnormally on the upper intake manifold. This defect manifests itself through premature and/or abnormal wear that leads to loss of engine coolant; excessive engine coolant consumption; and/or an engine coolant leak near or under the throttle body area of the upper intake manifold.

5. The purpose of this action is to hold accountable, and to obtain maximum legal and equitable relief from, GM for producing and placing into the stream of commerce Vehicles equipped with the 3800 engine.

#### **THE PARTIES**

6. Plaintiff Sher Family Limited Partnership is a family limited partnership organized in the Commonwealth of Pennsylvania, with an address of 1000 Hollingsworth Drive, P.O. Box 430, Phoenixville, PA 19460. Robert B. Sher, Jr. (“Sher”) is an adult individual and the General Partner for the Sher Family Limited Partnership, with an address of 1000 Hollingsworth Drive, Phoenixville, PA 19460. Sher Family Limited Partnership purchased a model year 2000 Buick Regal (“Vehicle”) equipped with the 3800 engine. Sher Family Limited Partnership is the record owner of the Vehicle. As its General Partner, Sher is authorized to represent the Sher Family Limited Partnership.

7. At all times relevant to this Complaint, Defendant GM was a Foreign Business Corporation, with its registered address c/o CT Corporation System, 1515 Market Street, Suite 1210, Philadelphia, Pennsylvania 19102.

8. At all times relevant herein, GM, through its agents, distributors, servants and/or employees, engaged in the design, manufacture, marketing, leasing and sale of Vehicles equipped with the 3800 engine nationally and internationally.

9. GM conducts business throughout Pennsylvania and in Philadelphia County.

**CLASS ALLEGATIONS**

10. Plaintiff brings this action pursuant to Pa. R. Civ. P. 1701 *et seq.* on behalf of himself and all others similarly situated, comprising a class consisting of all persons in the continental United States, including all persons in the Commonwealth of Pennsylvania, who purchased or leased a 1995 through 2003 General Motors Vehicle with a 3800 series engine (VIN K – RPO L36), including, but not limited to the following:

Buick Riviera  
Buick LeSabre, Buick Park Avenue  
Buick Regal  
Chevrolet Lumina, Chevrolet Monte Carlo  
Oldsmobile Ninety-Eight  
Oldsmobile Eighty-Eight  
Oldsmobile Intrique  
Pontiac Bonneville  
Pontiac Grand Prix  
(the “Class”)

11. Plaintiff is a member of the Class.

12. Excluded from the Class are all persons and entities with claims for personal injury, and all judicial personnel to whom this case is assigned. Also excluded from the Class are the defendant, any entities in which the defendant has a controlling interest, and all of their legal representatives, heirs and successors.

13. General Motors maintains a corporate presence within Pennsylvania which is central to its operations throughout the entire continental United States.

14. It is estimated that the Class consists of hundreds of thousands of persons throughout the continental United States and the Commonwealth of Pennsylvania and is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.

The exact number of Class members is presently unknown to Plaintiff, but can easily be ascertained from the warranty records of Defendant GM.

15. These are numerous questions of law or fact common to the members of the Class which predominate over any questions affecting only individual members and which make class certification appropriate in this case, including:

a. whether Defendant GM, acting individually or collectively with its agents, failed to conduct appropriate, reasonable and adequate testing of Vehicles equipped with the 3800 engine to determine the propriety of using a composite material around the engine's EGR stove pipe;

b. whether Defendant GM, acting individually or collectively with its agents, failed to conduct appropriate, reasonable and adequate research and studies to determine whether the composite material around the 3800 engines EGR stove pipe was sufficient to handle the heat emanating from a Vehicle's recycled exhaust, thus preventing melting of the upper intake plenum which results in internal or external coolant leak;

c. whether Defendant GM, acting individually or collectively with its agents, failed to warn or otherwise inform Plaintiff and other member of the Class of the abnormal wear caused by degradation of the composite material around the EGR stove pipe and the internal and external leaks associated with the 3800 engine as a result thereof;

d. whether Defendant GM falsely and deceptively misrepresented, omitted to adequately disclose and/or affirmatively concealed, in its advertisements, promotional materials and other materials, among other things, the potential engine damage and

defects associated with the use of composite materials in the final assembly of the 3800 engine; and,

e. whether Defendant GM's conduct violated the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.* and Pennsylvania Statutory and common law.

16. The claims asserted by the named Plaintiff are typical of the claims of the members of the Class.

17. This class action satisfies the criteria set forth in Pa. R. Civ. P. 1709 in that Plaintiff is a member of the Class; Plaintiff will fairly and adequately protect the interests of the members of the Class; Plaintiff's interests are coincident with and not antagonistic to those of the Class; Plaintiff has retained attorneys experienced in class and complex litigation as their counsel; and Plaintiff has, or through his counsel has access to, adequate financial resources to assure that the interests of the Class are adequately protected.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons.

a. it is economically impractical for most members of the Class to prosecute separate, individual actions; and

b. after the liability of Defendant GM has been adjudicated, the individual and aggregate claims of all members of the class can be determined by the Court.

19. Litigation of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to the individual Class members which would substantially impair or impede the ability of other Class members to protect their interests.

20. Class certification is also appropriate because Defendant GM has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate declaratory and/or injunctive relief with respect to the claims of Plaintiff and the Class members.

### **FACTUAL BACKGROUND**

21. Paragraphs 1 through 20 are incorporated herein by referenced as though the same were set forth below at length.

22. Defendant GM sells its Vehicles in Pennsylvania, and throughout the United States and the world.

23. Beginning with its 1995 model year Vehicles, GM utilized an upper intake manifold on its 3800 engine which was made of a composite material. Contained within the upper intake manifold is what is known as an EGR stove pipe and passage. Combined, these items are integral to a Vehicle's emission control system in that they channel and recycle Vehicle exhaust before it is released into the atmosphere. They channel and recycle a Vehicle's exhaust so that elements and impurities are further burned internally within the engine. This process creates heat that is, necessarily, dispensed to the upper intake manifold.

24. In the 3800 engine, heat emanating from the EGR passage melts the upper intake plenum so that the composite material degrades around the EGR stove pile and causes an internal or external coolant leak. At best, a class member may be alerted to low levels of coolant vis-à-vis a "warning indicator light" that signals the engine coolant has been depleted severely. In even this instance, damage to the engine would have already occurred by virtue of the loss of coolant. If the coolant leaks into the upper plenum it could result in "hydro-lock" of the cylinders. In such an instance, the Vehicle would stall and not be able to be restarted absent requiring, at best, spark plug and oil pan removal to free up the engine's moving parts.

25. When damage to the upper plenum occurs to a Vehicle which is out of manufacture's warranty, GM recommends that the upper and lower manifolds of the 3800 engines be replaced at a retail cost of \$1,200.00 to \$1,400.00. Yet, despite having knowledge of this problem since at least 1998, GM has not recalled the subject Vehicles, still requires affected class members to pay the cost of the recommended repairs, and continues to market Vehicles for sale with 3800 engines that contain composite intake manifolds.

26. At all relevant times, Plaintiff and other members of the Class were, and continue to be, misinformed, misled and deceived by Defendant GM with respect to the durability and safety of their Vehicles equipped with the 3800 engine.

27. At all relevant times, Defendant GM controlled the design, manufacture, marketing, lease and sale of Vehicles equipped with the 3800 engine.

28. The Owners Manuals provided to customers and the interval service policies followed by dealers in effect during the period relevant to this Complaint were wholly inadequate to alert Plaintiff and the Class to the defects associated with the use of composite materials for final assembly of the 3800 engine.

29. Defendant GM has not adequately informed the Class about the defects of the 3800 engine and/or to the engine itself when the EGR stove pipe melts and coolant leaks internally and/or externally.

30. Defendant GM knew, or should have known, that the composite materials utilized for the intake manifold were defective because, by design and material composition, they were and are insufficient to handle the heat that emanates from the EGR stove pipe.

31. At all times relevant to the claims herein, Defendant GM failed to conduct adequate testing and research regarding the use of composite intakes on the 3800 engine. Not

only did Defendant GM fail to engage in adequate pre-market testing of the Vehicles using composite intakes on the 3800 engine, after introducing the 3800 engine with composite intakes in the marketplace, Defendant GM continued to fail to fulfill its ongoing obligation to fully disclose the results of its testing and research regarding the damage to the Vehicles caused by the EGR passage melting the upper intake plenum.

32. The four-year statute of limitations generally applicable to UCC sales has been tolled in accordance with the “discovery rule” of UCC Section 2725. “A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance... the cause of action accrues when the breach is or should have been discovered.” 13 Pa. C.S. § 2725(b). The Supreme Court of Pennsylvania recognizes that the general interpretation of Section 2725 “presumes that all warranties, express or implied, relate only to the condition of the goods at the time of sale.” *Nationwide Ins. Co. v. Gen. Motors. Corp.*, 625 A.2d 1172, 1174 (Pa. 1993). Despite this ordinarily narrow interpretation of Section 2725(b), Pennsylvania courts have consistently ruled that standard vehicle warranties meet the requirements of the discovery rule because they “explicitly extend to future performance of the goods.” *Id.* (holding that the discovery rule applies to a claim for breach of express warranty when the vehicle was sold with an express 12 month / 12,000 mile new vehicle warranty); *Keller v. Volkswagen of America, Inc.*, 733 A.2d 642 (Pa. Super. 1999) (holding that the discovery rule applies to claims for breach of express warranty and violation of the Magnuson-Moss Warranty Act when the vehicle was sold with an express 24 month / 24,000 mile new vehicle warranty).

33. The GM vehicles purchased and leased by the Class were delivered with new vehicle warranty like those in *Nationwide* and *Keller*. Therefore the discovery rule exception of Section 2725(b) applies to the Class’ claims, and the statute of limitations was tolled until “the

breach is or should have been discovered.” 13 Pa. C.S. § 2725(b). The discovery rule applied to contract actions “where the injured party is unable, despite the exercise of due diligence, to know of an injury or its cause.” *Edwards v. Duane, Morris & Heckscher, LLP*, No. Civ.A. 01-4798, 2002 WL 32348269, at \*6 (E.D. Pa. Aug. 15, 2002). Here, Class members exercising due diligence were unable to discover the injury because GM did not disclose the injury when the vehicles were brought in for service. Class members could not have discovered the injury through the exercise of due diligence prior to the filing of *Strzakowski v. General Motors Corporation*, a similar action on behalf of a New Jersey class, on August 18, 2004. Therefore, the statute of limitations was tolled for members of the Class until August 18, 2004 under the discovery rule.

**COUNT I**  
**VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**  
**15 U.S.C. § 2310(d)(1)**

34. Paragraphs 1 through 33 are incorporated herein by reference as though the same were set forth below at length.

35. Congress enacted the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* (the “Act”) in 1975 in response to widespread complaints from consumers that many warranties were misleading and deceptive, and were not being honored. To remedy this problem of deception and failure to honor warranties, the Act imposes civil liability on any “warrantor” for, *inter alia*, failing to comply with any obligation under a written warranty and/or implied warranty. *See* 15 U.S.C. § 2310(d)(1). The Act authorizes a “suit for damages and other legal and equitable relief.” *Id.* The Act authorizes the award of attorneys’ fees (*id.*), and expressly authorizes class actions. 15 U.S.C. § 2310(e).

36. Defendant GM is a “warrantor” within the meaning of Section 2301(5) of the Act. Plaintiff and other members of the Class are “consumers” within the meaning of Section 2301(3) of the Act.

37. As set forth in Count II below, the allegations of which are incorporated herein by reference, Defendant GM expressly warranted the engine and the Vehicle’s Emissions system, which warranties are “written warranties” within the meaning of Section 2301(6) of the Uniform Commercial Code. Defendant GM breached its express warranties in the manner described above and below.

38. As set forth in Count III below, the allegations of which are incorporated herein by reference, Defendant GM impliedly warranted the Vehicles equipped with the 3800 engine as being merchantable and fit for a particular purpose, which warranties are implied warranties within the meaning of Section 2301(7) of the Act, and Sections 2-314 and 2-315 of the Uniform Commercial Code. Defendant GM breached these implied warranties in the manner described above and below. Any limitation period on recovery or exclusions of implied warranties is unconscionable within the meaning of Section 2-302 of the Uniform Commercial Code and, therefore, is unenforceable, in that, among other things, Plaintiff and members of the Class lacked a meaningful choice with respect to the terms of the express written warranties due to unequal bargaining power and a lack of warranty competition. In addition, any limitation period on recovery or exclusions failed of their essential purpose, because GM knew but failed to disclose, at the time it delivered the warranties and the cars, that the composite plenum used on the manifold of the 3800 engines was defective because it could not withstand the heat generated by the manifold and would wear prematurely and abnormally.

39. Defendant GM's knowledge of the fact that its Vehicles equipped with the 3800 engine would prematurely and/or abnormally wear and tear has given Defendant GM more than adequate opportunity to cure the problem, which opportunity it has not taken to date.

40. Plaintiff and other members of the Class were damaged by Defendant GM's failure to comply with its obligations under the applicable express and implied warranties. As a direct and proximate cause of Defendant GM's breaches of express and implied warranties, Plaintiff and other Class members have suffered actual economic damages, and are threatened with irreparable harm.

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

a. enter an order pursuant to Rule 1710 of the Pennsylvania Rules of Civil Procedure permitting this Count to be maintained as a class action on behalf of the Class as specified herein, appointing Plaintiff as the representative of the Class, and Plaintiff's counsel as counsel for the Class;

b. enter judgment in favor of Plaintiff and the Class against Defendant GM, as may be apportioned by the Court or finder of fact, for damages consisting of, among other things, compensation for excess engine wear and/or depreciation in Vehicle value (including reimbursing Class members who already have incurred repair and/or maintenance costs), and the remediation costs of GM's recommend repairs as well as interest, attorneys' fees, expert fees and costs of suit;

c. enter declaratory and injunctive relief against Defendant GM, requiring written Notice to all owners of Vehicles with 3800 engines who may have incurred costs of repairs as to their right to recoup those monies; and

d. award such further relief as the Court deems just and proper.

**COUNT II**  
**BREACH OF EXPRESS WARRANTY**  
**13 Pa. C.S.A. § 2313 and the Common Law**

41. Paragraphs 1 through 40 are incorporated herein by reference as though the same were fully set forth at length.

42. GM Vehicles equipped with the 3800 engine were subject to express warranties as described herein. GM expressly warranted in connection with each of the cars delivered to class members that the cars were free from defects in materials and workmanship. This express warranty was a “basis of the bargain” in all of the sale and lease contracts entered into by class members, and GM cannot demonstrate, as is its burden, that class members would have entered into the sale and lease transactions at the same transaction amounts had they been told that there was no warranty or that the composite plenum was defective, as alleged herein. Because the promise of nondefective condition was a basis of the bargain in all of GM’s sales of the cars to consumers, defendant bears the burden of proving consumers’ “non-belief” in this promise and affirmation of fact. 13 Pa. C.S.A. § 2313 (Comment 3) (“no particular reliance need be shown”); *Liberty Lincoln-Mercury, Inc. v. Ford Motor Co.*, 171 F.3d 818, 825 & n.7 (3d Cir. 1999) (reliance is only relevant if the warrantor first “has proven non-belief” by the consumer in the alleged promise or affirmation).

43. Given the foregoing express and warranty and affirmation that the cars were free from defects in materials and workmanship, the purported disclaimer and limitation of such warranties by defendants in their warranty manuals and service agreement are ineffective pursuant to 13 Pa. C.S.A. § 2-316(1), Comment 1, thereto, and the principles of unconscionability, 13 Pa. C.S.A. § 2-302. Defendant GM breached said express warranty

because it delivered cars that were uniformly defective in materials and workmanship, and because it failed to replace, at no charge to consumers, the composite plenums with non-defective plenums.

44. In addition, pursuant to 15 U.S.C. § 2308(a), the Magnuson-Moss Warranty Improvement Act (the “MMWA”), defendant, as the seller and/or manufacturer of the cars, was and is prohibited from disclaiming the express and implied warranties delivered with the cars. The promises and affirmations of fact delivered by defendant with respect to “free from defects in materials or workmanship” are express warranties that may not be contradicted by inconsistent warranty disclaimers without being rendered unfair, deceptive and unconscionable. To the extent such disclaimers attempt to disclaim any promise of defective-free condition, they are, therefore, unfair and deceptive. As a direct and proximate result of defendant’s breach of warranty, plaintiff and the Class have suffered an ascertainable loss in the form of increased costs for the repair of the cars. Defendant GM has not repaired and replaced the defective parts with conforming products, nor has it provided and installed, without charge, nondefective plenums on the cars. Defendant GM’s Limitations of Remedies have failed of their essential purpose as set forth in 13 Pa. C.S.A. § 2719(b), because GM uniformly has failed to construe “repair and replacement” to include repair and replacement of the defective materials and design of the plenum based upon premature wear due to heat naturally generated by the engine.

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

- a. enter an order pursuant to Rule 1710 of the Pennsylvania Rules of Civil Procedure permitting this Count to be maintained as a class action on behalf of the Class

and specified herein, appointing Plaintiff as the representative of the Class, and Plaintiff's counsel as counsel for the Class;

b. enter judgment in favor of Plaintiff and the Class against Defendant GM, as may be apportioned by the Court or finder of fact, for damages consisting of, among other things, compensation for excess engine wear and/or depreciation in Vehicle value (including reimbursing Class members who already have incurred repair and/or maintenance costs), and the remediation costs of GM's recommended repairs as well as interest, attorneys' fees, expert fees and costs of suit;

c. enter declaratory and injunctive relief against Defendant GM, requiring written notice to all owners of Vehicles with 3800 engines who may have incurred costs of repairs as to their right to recoup those monies; and

d. award such further relief as the Court deems just and proper.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY**  
**13 Pa. C.S.A. §§ 2-314, 2-315 and the Common Law**

45. Paragraphs 1 through 44 are incorporated herein by reference as though the same were fully set forth below at length.

46. Under Pennsylvania common and statutory law, a warranty of merchantability and a warranty of fitness for particular purpose are implied in all sales transactions where the seller has reason to know the particular purpose for which the product is to be used and that the consuming public is relying on the skill or judgment of the seller to furnish a suitable product. A warranty of merchantability is a warranty implied by law that a product is fit for the ordinary purposes for which it is used, is properly labeled and conforms to the representations made about

it. See 13 P.S. § 2314. A warranty of fitness for a particular purpose is a warranty implied by law that a product is fit for its intended use. See 13 P.S. § 2315.

47. GM Vehicles equipped with the 3800 engine were subject to both an implied warranty of merchantability and an implied warranty of fitness for a particular purpose.

48. Defendant GM breached said warranties in the manner described above.

49. Plaintiff and other Class members have been damaged by Defendant GM's breaches of warranties in the manner described above.

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

a. enter an order pursuant to Rule 1710 of the Pennsylvania Rules of Civil Procedure permitting this Count to be maintained as a class action on behalf of the Class as specified herein, appointing Plaintiff as the representative of the Class, and Plaintiff counsel as counsel for the Class;

b. enter judgment in favor of Plaintiff and the Class against Defendant GM and/or as may be apportioned by the Court or finder of fact, for damages consisting of, among other things, compensation for excess engine wear and/or depreciation in Vehicle value (including reimbursing Class members who already have incurred repair and/or maintenance costs), and the remediation costs of GM'S recommended repairs as well as interest, attorneys' fees, expert fees and costs of suit;

c. enter declaratory and injunctive relief against Defendant GM, requiring written Notice to all owners of Vehicles with 3800 engines who may have incurred costs of repairs as to their right to recoup those monies; and

d. award such further relief as the Court deems just and proper.

**COUNT IV**  
**FRAUDULENT CONCEALMENT**

50. Paragraphs 1 through 49 are incorporated herein by reference as though the same were fully set forth below at length.

51. Under Pennsylvania common law, one party to a transaction, who by concealment or other action, intentionally prevents the other party to that transaction from acquiring material information, is subject to the same liability to the other party for pecuniary loss as though he or she had affirmatively represented the non-existence of the information that the other was thus prevented from discovering. See Restatement (2d) of Torts, § 550.

52. Defendant GM, by its concealment and other fraudulent actions described above, intentionally prevented the Plaintiff and other members of the Class from acquiring material information concerning the dangers and hazards associated with the use of composite materials for the intake(s) on Vehicles with the 3800 engine.

53. Plaintiff and other Class members have been damaged by Defendant GM's fraudulent concealment.

54. Defendant GM is liable to Plaintiff and other members of the Class for the damages and other relief as a result of Defendant GM's concealment as though Defendant GM had affirmatively stated that there were no risks or hazards associated with use of composite materials for the intake(s) on the 3800 engine, thus preventing Plaintiff and the Class from discovering the hazards and risks.

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

a. enter an order pursuant to Rule 1710 of the Pennsylvania Rules of Civil Procedure permitting this Count to be maintained as a class action on behalf of the Class as specified herein, appointing Plaintiff as the representative of the Class, and Plaintiff's counsel as counsel for the Class;

b. enter judgment in favor of Plaintiff and other Class members against Defendant GM, and/or as may be apportioned by the Court or finder of fact, for damages consisting of, among other things, compensation for excess engine wear and/or depreciation in Vehicle value (including reimbursing Class members who already have incurred repair and/or maintenance costs), and the remediation costs of GM's recommended repairs as well as interest, attorneys' fees, expert fees and costs of suit;

c. enter declaratory and injunctive relief against Defendant GM, requiring written Notice to all owners of Vehicles with 3800 engines who may have incurred costs of repairs as to their right to recoup those monies, and

d. award such further relief as the Court deems just and proper.

**COUNT V**  
**DECLARATORY RELIEF**

55. Paragraphs 1 through 54 are incorporated herein by reference as though the same were fully set forth below at length.

56. This claim is asserted on behalf of Plaintiff and other Class members in accordance with the Pennsylvania Declaratory Judgments Act, 42 Pa. C.S.A. § 7531 *et seq.*, and Rules 1601 *et seq.* of the Pennsylvania Rules of Civil Procedure.

57. Plaintiff and other Class members are entitled to declaration that Defendant GM's conduct described herein constitutes violations of applicable Pennsylvania Statutory and common law. The declaratory relief requested includes an order declaring Defendant GM's conduct, as alleged herein, to be unlawful, and requiring Defendant GM to compensate Plaintiff and other Class members in the manner described herein and to supply Class members with a complete and truthful explanation of the damage caused by utilizing composite materials for the intake(s) of the 3800 engines.

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

- a. enter an order pursuant to Rule 1701 of the Pennsylvania Rules of Civil Procedure permitting this Count to be maintained as a class action on behalf of the Class as specified herein, appointing Plaintiff as the representative of the Class, and Plaintiff's counsel as counsel for the Class;
  - b. enter an order declaring Defendant GM's conduct, as alleged herein, to be unlawful, compensating Plaintiff and other Class member in the manner described herein and requiring Defendant GM to furnish Plaintiff and other Class members with a complete and truthful explanation of the harm caused by utilizing composite materials on the intake(s) of the 3800 engine;
  - c. award Plaintiff and the Class attorneys' fees, litigation expenses and costs;
- and
- d. award such other and further relief as the Court deems just and proper.

**COUNT VI**  
**UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW**  
**73 Pa. C.S.A. §§ 201-2(xiv) & 201-9**

58. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraph as though fully set forth at length herein.

59. Defendant's actions and omissions described above constitute unfair and deceptive acts or practices in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("CPL"), constituting, among other things, "a failure to comply with a written warranty," 73 P.S. § 201-2(xiv), and deceptive conduct which created a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(xxi).

60. As a direct and proximate result of defendant's violations of Pennsylvania law, plaintiff and the Class have suffered ascertainable losses representing the difference in the price they paid for a car delivered with a defective composite plenum and a car designed and delivered with a non-defective plenum, which is required for defendant to conform with its promises, affirmations of fact and the course of dealing and usage of trade concerning the design and operation of automobile engines.

61. Because non-defective materials and workmanship were a basis of the bargain in all of defendant's sales of the cars to consumers, defendant bears the burden of proving consumers' "non-belief" in this promise and affirmation of fact. 13 Pa. C.S.A. § 2313 (Comment 3) ("no particular reliance need be shown"); *Liberty Lincoln-Mercury, Inc. v. Ford Motor Co.*, 171 F.3d 818, 825 & n.7 (3d Cir. 1999) (reliance is only relevant if the warrantor first "has proven non-belief" by the consumer in the alleged promise or affirmation).

62. Defendant's uniform breach of its written warranty, its use of purported warranty disclaimers and exclusive or limited remedies, and its uniform violation of the MMWA

constitute violations of the UTPCPL, thereby entitling plaintiff and the Class to a minimum of \$100 in damages and an award of treble damages and attorneys' fees as set forth in the UTPCPL.

WHEREFORE, Plaintiff, on behalf of himself and all other individuals similarly situated, respectfully requests this Court to enter judgment in his favor, and against Defendant, and Order the following relief:

(a) Certification of this action as a class action under Rule 1701 *et seq.* of the Pennsylvania Rules of Civil Procedure and appointing the undersigned counsel as counsel for the Class;

(b) A declaratory judgment that defendant violated the UTPCPL;

(c) Statutory damages of \$100 per class member;

(d) Actual and treble damages pursuant to the UTPCPL, together with an award of reasonable attorney's fees and costs of suit to plaintiff and the Class pursuant to the UTPCPL; and

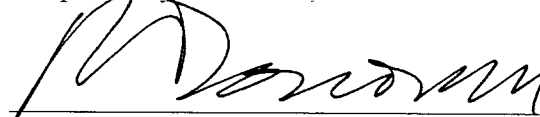
(e) Such other relief as allowed by law.

**JURY DEMAND**

Plaintiff hereby demands trial by jury of all issues properly triable thereby.

DATED: January \_\_, 2006

Respectfully submitted,



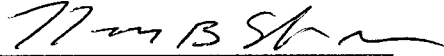
Michael D. Donovan, Esq.  
Attorney I.D. No. 51895  
DONOVAN SEARLES LLC  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103  
(215) 732-6067

Francis J. Farina, Esq.  
Attorney I.D. No. 48736  
LAW OFFICES OF FRANCIS J. FARINA  
577 Gregory Lane  
Devon, PA 19333  
(610) 695-9007

Attorneys for Plaintiff and the Class

## VERIFICATION

I, Robert B. Sher, Jr., on behalf of Sher Family Limited Partnership, hereby depose and say that I am the plaintiff in this action and have personal knowledge of the facts set forth in the foregoing Complaint. These facts are true and correct to the best of my knowledge, information and belief. I acknowledge that any false statements made are subject to the penalties of law relating to unsworn falsification to authorities.

  
Robert B. Sher, Jr., General Partner

Dated: January 11, 2006