

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Geoffrey Butler

Plaintiff

- and -

Honda Canada Inc.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date November 14, 2006

Issued by

N. TENEBALUM

Local registrar

Address of court office Ontario Superior Court of Justice
Ground Floor
80 Dundas Street
London, Ontario
N6A 2P3

TO: Honda Canada Inc.
715 Milner Avenue
Toronto, Ontario
M1B 2K8

CLAIM

1. The Plaintiff, Geoffrey Butler, on his own behalf and on behalf of others similarly situated, claims:
 - (a) An order certifying this action as a class proceeding and appointing Geoffrey Butler as the representative plaintiff;
 - (b) Damages in the amount of \$1,500 per class member for negligence, breach of warranty and unjust enrichment;
 - (c) Class-wide punitive and exemplary damages in the amount of \$5,000,000.00;
 - (d) Pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
 - (e) Costs of this action on a substantial indemnity basis; and
 - (f) Such further and other relief as this Honourable Court considers just.

THE PARTIES

2. The plaintiff, Geoffrey Butler, is an individual residing in London, Ontario.
3. The defendant, Honda Canada Inc. ("Honda"), is a corporation incorporated pursuant to the laws of Canada and has its head office at 715 Milner Avenue, Toronto, Ontario M1B 2KB. Honda distributes, markets and sells brand name Honda and Acura automobiles throughout Canada which it designs and manufactures. Honda annually has sold between 114,000 and 134,000 passenger cars and light trucks, throughout Canada, during the period 2000 to 2003.

BACKGROUND

4. On or about September 23, 2002, Geoffrey Butler entered into an agreement to purchase, for good and valuable consideration, a new 2003 model year Honda Odyssey EXL van ("Honda van") from Honda.

5. On or about November 11, 2002, Geoffrey Butler purchased, for further good and valuable consideration, from Honda, a "Honda Plus" 6 year or 160,000 kilometre warranty, to apply to the Honda van. This extended warranty is additional to, and in conjunction with, the basic warranties provided at no extra charge with the purchase of any new Honda or Acura vehicle.

6. Geoffrey Butler took possession of the Honda van on November 11, 2002 and the warranty became effective as of November 11, 2002.

7. Honda impliedly warranted to Geoffrey Butler that the vehicle's odometer would accurately record the kilometres actually driven by the Honda van.

8. Geoffrey Butler has relied upon the accuracy of the odometer to get the warranty coverage he purchased. He also relied upon the accuracy of the odometer in determining its potential resale value.

9. Honda negligently designed and manufactured the Honda van's odometer so that it inflates the kilometres driven by approximately 3%. In a test over a distance of 98.86 kilometres the Honda van's odometer registered a distance of 101.9 kilometres, for a difference of 3.04 kilometres or 3.08%.

NEGLIGENCE

10. Honda intentionally and negligently designed and manufactured odometers in Honda and Acura vehicles, model year 2000 through 2006 and model year 2007 Honda Fit vehicles, which Honda sold or leased in Canada. These odometers were designed and manufactured with a tolerance standard from -1% to +3.75%. This defective odometer more often than not inflates the kilometres driven by a vehicle. Under certain conditions the inflation factor may be as high as 4%.

11. The plaintiff states that the defendants were negligent in the design, manufacture, marketing, sale and/or servicing of the vehicles such that their odometers fail to accurately record the kilometres actually driven by the vehicle.

12. The plaintiff states that his damages have been caused by the negligence of Honda. Such negligence includes, but is not limited to, the following:

- (a) The defendant failed to design the odometer to accurately record the kilometres a vehicle actually travels;
- (b) The defendant failed to manufacture the odometer to accurately record the kilometres a vehicle actually travels;
- (c) The defendant failed to design and conduct tests that would have detected the defect and determined whether the odometer was functioning accurately;
- (d) The defendant incorporated materials and parts into the design and manufacture of the odometer that were inappropriate for the intended use;
- (e) The defendant set a tolerance standard in the defective odometers that allows errors which, more often than not, inflate the kilometres driven;
- (f) The defendant knowingly distributed, marketed, sold and/or serviced a product that they knew or ought to have known was defective;
- (g) Such further and other negligence which is within the knowledge of the defendants.

RESULTING DAMAGES

13. The defendant, Honda, has deprived the plaintiff Geoffrey Butler and the members of the proposed class from the benefit of their bargains, for which they paid good and sufficient consideration. Specifically, the following damages have resulted to Geoffrey Butler and the members of the proposed class:

- (a) They will not receive the benefit of the standard warranties that come with all new Honda and Acura vehicles in Canada plus the benefit of any extended warranties purchased in addition to the standard warranties, and any used vehicle warranties purchased from Honda or provided by Honda in respect of

the purchase of a used Honda vehicle. Honda has reduced the effective period of each class member's warranties over the lifetime of their vehicles, resulting in costs to the class members for repairs that were in fact covered by warranty. The savings to Honda and the corresponding detriment to the consumer are considerable;

- (b) They have experienced a reduction in the resale value of their vehicles resulting from the inflated kilometres attributed to their vehicles by Honda's defective odometer;
- (c) They have experienced a reduction in the resale value of their vehicles resulting from the decreased warranty coverage, which has value and is transferable to a new purchaser; and
- (d) They will not receive the benefit of their allotted kilometre allowances under a lease agreement. Honda has reduced the effective kilometre allowance of each class member who leased a vehicle, resulting in either charges for excess kilometres or the early conclusion of the lease agreement. The savings to Honda and the corresponding detriment to the consumer are considerable.

THE RELEVANT STATUTES

14. The plaintiff pleads and relies on the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

15. The plaintiff pleads and relies on the *Negligence Act*, R.S.O. 1990, c. N-1, as amended.

16. The plaintiff pleads and relies on section 27 of the *Weights and Measures Act*, R.S.C. 1985, c. W-6.

THE PLACE OF TRIAL

17. The plaintiff proposes that this action be tried in the City of London in the Province of Ontario.

November 1st, 2006

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

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Solicitors for the Plaintiff

Geoffrey Butler
Plaintiff

Honda Canada Inc.
Defendant

Court File No: » 52333C8

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at LONDON

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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