

**In the CIRCUIT COURT of COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

SCOTT GAUVIN and GARY F. STRELL)	
On behalf of themselves and all others)	
similarly situated,)	
)	
Plaintiffs)	
)	
v.)	Class Action Complaint
)	
GENERAL MOTORS CORP.)	
A Delaware Corporation)	
)	
)	
Defendant)	

COMPLAINT

1. Nature of the Case. This case is brought on behalf of purchasers of Oldsmobiles as set forth in the class definition contained herein. As alleged herein, Defendant General Motors Corporation knowingly concealed from, or otherwise failed to disclose to, its dealers and consumers that it would be eliminating the Oldsmobile brand over the next few years, or perhaps sooner. This fact was material and its disclosure has caused a substantial diminution in value for late model Oldsmobiles. Thus, defendant's conduct has violated the Illinois Consumer Fraud Act, 815 ILCS 505/1 *et seq.* and similar laws in the forty-nine other states and the District of Columbia.

Jurisdiction and Venue

2. Jurisdiction. This Court has jurisdiction over this litigation pursuant to Illinois Code of Civil Procedure, 735 ILCS 5/2-209(b)(4). General Motors is a corporation doing business within the state.

3. Venue. Venue is proper in this court under Illinois Code of Civil Procedure, 735 ILCS 5/2-101 and 5/2-202 because Defendant General Motors is a foreign corporation doing business in, and maintaining a registered agent in, Cook County, Illinois.

Parties

4. Plaintiffs and Proposed Class Representatives. Plaintiff Scott C. Gauvin is a resident of Springfield, Illinois. Mr. Gauvin purchased a new 2000 Oldsmobile Alero from Charlie Sattler Oldsmobile – Cadillac, Inc. of Springfield, Illinois on or about June 9, 2000.

5.

7. Defendant. Defendant, General Motors Corporation (“GM”) is a Delaware corporation whose principal place of business is Detroit, Michigan.

The Class

8. This action may be brought and properly maintained as a class action pursuant to the provisions of the Illinois Code of Civil Procedure 735 ILCS 5/2-801 et seq. Plaintiffs bring this action on behalf of themselves and a class of all others similarly situated, as defined herein.

9. Class Definition. Plaintiffs request certification of a nationwide class. If, however, the Court determines that a nationwide class is not appropriate or otherwise cannot be maintained, then, alternatively, Plaintiffs request certification of a class including all consumers who have claims arising under Illinois Law. Thus, Plaintiffs request certification of a class defined as either:

(a) Nationwide class: “All residents, or persons or legal entities deemed to be residents, of the fifty states and the District of Columbia, other than employees, officers and directors of Defendant, General Motors Corporation, who bought or leased a new or used 1996 or later model year Oldsmobile which they still owned or leased as of December 12, 2000.

(b) Statewide class: “All residents, or persons or legal entities, who may properly prevail themselves of the Illinois Consumer fraud Act, other than employees, officers and directors of Defendant, General Motors Corporation, who bought or leased a new or used 1996 or later model year Oldsmobile which they still owned or leased as of December 12, 2000.

10. Numerosity. The proposed class numbers in the hundreds of thousands or, possibly, in excess of a million persons throughout the United States. Therefore, joinder of all class members is impracticable.

11. Existence and Predominance of Common Questions of Law and Fact. Questions of law and fact arise from Defendant’s conduct as alleged herein. Such questions are common to all class members and predominate over any questions affecting only individual class members. The myriad of questions of law and fact common to the class include:

- a) Whether Defendant wrongfully concealed its decision to eliminate its Oldsmobile brand;
- b) Whether Defendant misrepresented that it intended to continue its Oldsmobile brand;
- c) When Defendant began to consider phasing out its Oldsmobile brand;
- d) When Defendant decided to phase out its Oldsmobile brand;
- e) Whether Defendant had a duty to inform consumers that it was considering or had decided to phase out its Oldsmobile brand;
- f) Whether Defendant knowingly misled Oldsmobile dealers and consumers to believe that it would be continuing to produce and support the Oldsmobile brand;
- g) Whether Defendant’s conduct violates the Illinois Consumer Fraud act and similar laws in forty-nine other states and the District of Columbia;
- h) Whether Defendant’s conduct diminished the resale value of 1996 or later model year Oldsmobiles.

12. Typicality of Claims. Plaintiff’s’ claims are typical of members of the class – i.e., current owners of 1996 and later model year Oldsmobiles. Plaintiffs and the class members are all similarly injured through the payment of substantially more for Oldsmobiles than they were represented to be worth and/or through substantial diminishment in the value of the value of Oldsmobiles, which diminishment would not have been incurred in the absence of Defendant’s wrongful conduct. Each Plaintiff is a member of the proposed class.

13. Adequate Representation. Plaintiffs will adequately, vigorously and fairly represent and pursue the interests of the class members. Plaintiffs understand the nature of their claims herein. Each Plaintiff's claims are coincident with, and not antagonistic to, the claims of the class members who he represents. No Plaintiff has any disqualifying conditions. Plaintiffs' counsel, Clinton A. Krislov and Robert J. Stein II, and generally the law firm of Krislov and Associates, Ltd., have vast experience in consumer class action cases.

14. Appropriateness of a Class Action. The class litigation is an appropriate method for fair and efficient adjudication of the claims involved. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; it will permit a large number of similarly-situated persons and entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would require. Class action treatment will also permit the adjudication of relatively small claims by certain class members, who could not individually afford to litigate a complex claim against a large corporate defendant. Further, even for those class members who could afford to litigate such a claim, it would still be economically impractical, as the cost of litigation is almost certain to exceed any recovery they would obtain.

15. Plaintiffs are unaware of any difficulty likely to be encountered in the management of this case that would preclude its maintenance as a class action.

Jury Demand

16. Plaintiffs and class members demand a trial by jury for every matter so triable.

Factual Allegations

17. First incorporated as the Olds Motor Vehicle Company in 1897 by founder R.E. Olds, Oldsmobile, as the division of GM is known today, began its demise in the early 1990s. GM knew but did not disclose to Plaintiffs and other class members that its Oldsmobile division was destined for failure. Having made its name selling big cars such as the "Ninety-Eight," Oldsmobile began experiencing plummeting sales throughout the last decade as large cars fell out of favor with consumers. After selling more than one million cars a year in the late 1970s and again in the mid-1980s, by 1992 sales has fallen to just 331,000. Last year, Oldsmobile sold just 282,000 vehicles.

18. Beginning in the early 1990s, GM knew that Oldsmobile and its other divisions were rapidly losing market share among baby boomers to Toyota, Honda and other foreign brands. GM made a decision to realign Oldsmobile as the "import fighter" division to compete with the Hondas and Toyotas of the world; to this end, it eliminated from the Oldsmobile line the larger sedans which had been Oldsmobile's bread and butter, and added smaller models like the Aurora, Alero and Intrigue and other models designed to attract younger customers who favored Toyota, Honda, etc. This had the net effect of turning away Oldsmobile's older and established consumers (who wanted a large sedan) to like the Mercury Grand Marquis, while Oldsmobile remained unable to attract younger buyers to fill the void. In fact, Oldsmobile sold no more cars last year to baby boomers and younger buyers than it did in 1991, while it continued to lose much of its market share among older Americans.

19. Also contributing to Oldsmobile's demise was GM's failure to contribute more money to marketing the vehicles in an industry where survival depends on aggressive marketing. Over the past few years. Oldsmobile dealers complained that GM was not committed to providing the marketing resources Oldsmobile needed to compete, especially in light of its realignment to compete with foreign cars. As a result, the Oldsmobile line of new cars was lost in the shuffle of an industry that spends \$8 billion per year on advertising.

20. By failing to provide sufficient resources for its experiment to eliminate large vehicles from its line and replace them with vehicles intended to compete with imported cars, GM doomed its Oldsmobile division.

21. For the past several years GM has known that its Oldsmobile brands was doomed to fail and would eventually be eliminated. GM also knew that if consumers were aware that the Oldsmobile brand was going to be, or likely to be, discontinued they either would not purchase Oldsmobiles or would not be willing to pay as much for a new or used Oldsmobile.

22. Thus, GM knew that its deciding or considering to eliminate its Oldsmobile was a material fact in a consumer's decision to purchase or lease a new or used Oldsmobile. Simply put, GM knew that if consumers were aware that Oldsmobile was being, or was likely to be, eliminated, that knowledge would result in a loss of sales of new Oldsmobiles and diminish the value of new and used Oldsmobiles.

23. GM knew that one reason consumers purchased an Oldsmobile was its reputation as an established and venerable brand of automobile, which provided confidence in not only the vehicle's reliability but also the nationwide network of Oldsmobile dealers available to service and repair the car. GM also knew that the continued existence, and the belief in the continued existence, or a vehicle's brand inherently enhances both the sale (new) and resale (used) value of the automobile.

24. On December 12, 2000, GM President and Chief Executive Officer Rick Wagoner announced that GM will phase out its Oldsmobile marketing division and brand over the next several years. Under the phase-out plan, GM will continue selling its Oldsmobile models, but will not develop any new models. Production of each of the current models will stop once the price of the vehicles is exceeded by the cost of production. Funds that would have otherwise been devoted to designing and promoting Oldsmobile models will be spent on other GM products particularly the Saturn, which GM anticipates replacing Oldsmobile as its foreign brand competitor.

25. At all times prior to December 12, 2000, GM intended for consumers to rely on its representations, or be deceived or otherwise misled by its omissions and concealment, so as to believe that the Oldsmobile brand would continue in existence and would not be eliminated by GM.

26. Plaintiffs and other members of the Class, as purchasers of Oldsmobile models, were the victims of GM's wrongful conduct. As set forth herein, purchasers and lessees of Oldsmobile vehicles were induced by GM's ongoing pattern of fraudulent misrepresentations, material omissions and false and misleading statements regarding the continuation of the Oldsmobile brand.

27. By way of its wrongful conduct, GM intended to and did supply to Plaintiffs and other members of the class with vehicles whose brand it knew would soon be obsolete.

28. As a direct and proximate result of the foregoing wrongful conduct of GM, the value of Plaintiffs and class members' Oldsmobiles has been diminished thereby causing monetary damages to Plaintiffs and class members.

COUNT I

Violation of Consumer Protection Statutes

29. Plaintiffs reallege paragraphs 1 through 28 as if fully set forth herein.

30. All 50 states and the District of Columbia have enacted statutes to protect consumers against unfair, deceptive or fraudulent business practices, unfair competition and false advertising.

- 31.** At all relevant times, there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (the "Consumer Fraud Act").
- 32.** Section 2 of the Consumer Fraud Act, 815 ILCS 505/2 provides:
Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965 in the conduct of any trade or commerce are hereby declared unlawful whether any person had in fact been misled, deceived or damaged thereby. In constituting this section consideration shall be given to the interpretations of the Federal Trade Commission and federal courts relating to Section 5(a) of the Federal Trade Commission Act.
- 33.** Purchasers and Lessees of Oldsmobiles, including Plaintiffs and the class members, are consumers within the meaning of the Act. 815 ILCS 505/1(e).
- 34.** An Oldsmobile is merchandise as defined by the Act. 815 ILCS 505/1(b).
- 35.** GM's consideration and decision to eliminate the Oldsmobile brand are each material facts as defined by the Act. If either of these facts were publically known, it would cause a decrease in sales of Oldsmobiles and/or diminished the value of new and used Oldsmobiles.
- 36.** By means of the aforementioned conduct, GM violated the Illinois Consumer Fraud Act by concealing, suppressing and/or omitting material facts with the intent that others, namely Oldsmobile dealers and purchasers would rely upon the concealment, suppression or omission of such material facts.
- 37.** By means of the aforementioned conduct, GM used or employed a deception, fraud, false pretense, false promise, and/or misrepresentation in violation of the Illinois Consumer Fraud Act.
- 38.** GM intended to, and actually did, profit from its wrongful conduct.
- 39.** Plaintiffs and class members were in fact deceived by GM's wrongful conduct and have suffered monetary losses, including the diminution in the value of their Oldsmobiles, as a result of that wrongful conduct.
- 40.** By means of the aforementioned allegations, GM's wrongful conduct also violated the consumer fraud laws of the forty-nine other states and the District of Columbia.

Prayer for Relief

WHEREFORE, Plaintiffs, on behalf of themselves and the class members pray for the following relief:

- A.** An order certifying a class as set forth herein, with the Plaintiffs Scott C. Gauvin and Gary F. Strell designated as the class representatives and Clinton A. Krislov designated as class counsel;
- B.** A declaration that General Motors conduct violated the laws alleged in this action;
- C.** An award of monetary damages as authorized applicable laws in favor of Plaintiffs and class members and against General Motors for the damages incurred by Plaintiffs and class members as a result of General Motors illegal conduct as alleged herein;

D. An award of all reasonable attorneys' fees, costs and expenses, as authorized by the applicable laws, in favor of Plaintiffs and class members and against General Motors; and

E. Such further relief as this Court deems just and proper.

By: Clint Krislov

Attorney for Plaintiffs

Clinton A. Krislov
Robert J. Stein
William M. Sweetnam
KRISLOV & ASSOCIATES, LTD.
20 North Wacker Drive, Suite 1350
Chicago, Illinois 60606
Tel.: (312) 606-0500
Fax: (312) 606-0207
E-Mail: mail@krislovlaw.com