

Form 4.02A

2014

Hfx. No.

427140

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

SUE BROWN and **SANDRA DEE**



- AND -

GENERAL MOTORS OF CANADA LIMITED, a body corporate and
GENERAL MOTORS COMPANY, a body corporate

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28

Notice of Action

TO: GENERAL MOTORS OF CANADA LIMITED
1908 Colonel Sam Drive
Oshawa, Ontario L1H BP7

AND TO: GENERAL MOTORS COMPANY
Jefferson Avenue
100 Renaissance Center
Detroit, Michigan, USA 48243

Action has been started against you

The plaintiffs take action against you.

The plaintiffs started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiffs claim the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiffs must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiffs.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary, The Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia (telephone #902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The plaintiffs designate the following address:

Wagners Law Firm
1869 Upper Water Street
Suite PH301, Historic Properties
Halifax, Nova Scotia B3J 1S9

Documents delivered to this address are considered received by the plaintiffs on delivery.

Further contact information is available from the prothonotary.

Proposed place of trial

The plaintiffs propose that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

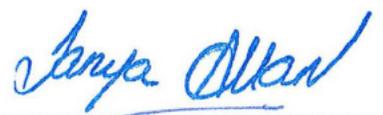
Signed this 9th day of May, 2014.



RAYMOND F. WAGNER, Q.C.
Solicitor for Plaintiffs

Prothonotary's certificate

I certify that this notice of action, including the attached statement of claim, was filed with the court on *May 9*, 2014.



Prothonotary

Tanya Allan
Deputy Prothonotary

Statement of Claim

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

I. OVERVIEW

1. This is a proposed class action against General Motors Company (“GM”) and General Motors of Canada (“GMC”), over their failure to disclose and to affirmatively conceal a known defect in vehicles it designed, manufactured, marketed and sold throughout all Provinces in Canada.

2. It is alleged that GM and GMC were negligent in designing, manufacturing and installing ignition switches in various models of automobiles (“the Affected Vehicles”) made by the Defendants.

3. In or about April 2006, the design of the ignition switch was changed by GM. It is alleged that the Defendants knew that the new specification and design of the ignition switch was defective and dangerous to purchasers and operators of their motor vehicles.

4. Although GM and GMC both had knowledge of the defects associated with the ignition switch, they took no steps to address the safety defect and failed to notify the owners of their vehicles of the defects with the switch.

5. Due to this lack of disclosure and the defective design of the ignition switch, the Plaintiffs and Class Members say that they have suffered losses and damages as a result of the Defendants’ actions and omissions.

II. REPRESENTATIVE PLAINTIFF AND CLASS

6. The Plaintiff, Sue Brown, resides in Bedford, Nova Scotia. She purchased and owns a 2005 Saturn Ion. On January 5, 2011 the vehicle, suddenly and without warning, lost all power as she neared an intersection. She fortunately avoided a collision. In March 2014, she received a letter from GMC advising that

“a defect which relates to motor vehicle safety exists” for her vehicle and that GM was conducting a recall of the vehicle.

7. The Plaintiff, Sandra Dee, resides in Halifax, Nova Scotia. She purchased and owns a 2006 Chevrolet Cobalt. In March 2014 she received a letter from GMC advising that “a defect which relates to motor vehicle safety exists” for her vehicle and that GM was conducting a recall of the vehicle.

8. The Plaintiffs seek to certify this action as a Class Proceeding and plead the *Class Proceedings Act*, S.N.S. 2007, c. 28, as providing the basis for such certification. The Plaintiffs, as the Representative Plaintiffs, do not have any interest adverse to any of the members of the proposed Class. The Plaintiffs state that there is an identifiable class that would be fairly and adequately represented by the Plaintiffs; that the Plaintiffs’ claims raise common issues; and that a Class Proceeding would be the preferable procedure for the resolution of such common issues.

9. The Plaintiffs propose to bring a Class Proceeding on behalf of themselves and a Class of other Canadians:

All individuals and entities who, on the date of February 7, 2014, owned one of the vehicles subject to a 2014 ignition switch recall.

The proposed Class will be further defined in the Motion for Certification.

III. DEFENDANTS

10. The Defendant, GM, is a body corporate which exists pursuant to the laws of the State of Delaware, United States of America. GM has a head office in Detroit, Michigan and is responsible for designing, engineering, developing, manufacturing and marketing of the affected vehicles.

11. A previous incarnation of the Defendant, GM, was re-organized on June 1, 2009, as a result of entering bankruptcy in the United States Bankruptcy Court for the Southern District of New York.

12. On July 10, 2009, the re-organized Defendant, GM, purchased the continuing operations, assets, trademarks, and the shares of GMC owned by the previous incarnation of GM as part of the US Chapter 11 reorganization.

13. At no time during the reorganization as part of the Chapter 11 bankruptcy did the previous incarnation of the Defendant, GM, disclose the dangerous ignition switch defect. Because GM acquired and operated the previous incarnation and ran it as a continuing business enterprise, and because GM was aware from its inception of the ignition switch defects in the Affected Vehicles, GM is liable through successor liability for the deceptive and negligent acts and omissions of Old GM.

14. The Defendant, GMC, is a body corporate and is federally incorporated to carry out business in Canada. GMC has its head office in Oshawa, Ontario and is involved in designing, engineering, developing, manufacturing and marketing of the affected vehicles. GMC is a wholly owned subsidiary of GM. The Defendant GMC is registered with the Nova Scotia Registry of Joint Stocks as an extra-provincial corporation.

15. At all material times, GMC was the sole distributor of the affected vehicles in Canada, which were sold throughout Canada via its network of dealers and retailers.

IV. THE IGNITION SWITCH DEFECTS

16. It is imperative to driver and passenger safety that a vehicle manufacturer ensures that its vehicles remain operational from the time the driver starts the vehicle until the driver intentionally shuts down the vehicle. A vehicle and its electrical operating systems must remain operational during ordinary driving conditions.

17. The Affected Vehicles are defective and dangerous for multiple reasons, including the following:

- i. The ignition switches can inadvertently shut off the engine and vehicle electrical system during normal driving conditions;
- ii. When the engine and the electrical system shut down, the power steering and power brakes also shut down, creating a serious risk of accident;
- iii. When the electrical system shuts down, the vehicle's airbags are disabled.

18. Because of the ignition switch defects, the Affected Vehicles are unreasonably prone to be involved in accidents and those accidents are likely to result in serious bodily harm, loss and damage to the owners, drivers and passengers of the Affected Vehicles as well as to other vehicle operators and pedestrians.

The Defendants' knew of the Ignition Switch Defects but chose to conceal them:

19. For many years, the Defendants have known of the ignition switch defects that exist in millions of the Affected Vehicles sold in Canada. The Defendants chose to conceal the defects and dangers to protect their profits and maximize sales, thereby allowing unsuspecting purchasers to buy dangerous and defective vehicles and allow unsuspecting owners to continue to drive unreasonably dangerous vehicles.

20. The Defendants learned of the ignition switch defects as early as 2001. During pre-production development of the Saturn Ion, the Defendants' engineers learned that the ignition could inadvertently move from the "Run" position to the "Accessory" or "Off" position.

21. In 2003, an internal report documented the Defendants' service technician observations of a stall while driving. The technician noted that the weight of several keys on the key ring had worn out the ignition switch.

22. In 2004, the Defendants' engineers encountered the ignition switch defects again during tests drives of the Chevy Cobalt before it went to market.

23. The Defendants opened an engineering inquiry to investigate the ignition switch issue. The Defendants' engineers pinpointed the problem and were able to repeatedly replicate the problem during test drives.

24. The Defendants' engineers believed that a low key cylinder torque effort was an issue and considered a number of potential solutions. The Defendants chose to not follow through with an exploration of any of these potential solutions.

25. When the Chevy Cobalt hit the market in 2005, the Defendants immediately started receiving complaints about sudden loss of power incidents, including many instances in which the key would suddenly move out of the "Run" position. The Defendants conducted further inquiries.

26. In May 2005 the Defendants' engineers again assessed the problem and proposed that the Defendants re-design the key head from a "slotted" to a "hole" configuration. The Defendants chose to not implement this fix.

27. Starting in approximately 2005, the Defendants began to receive regular reports of death and injuries involving power, steering, and/or airbag failures in the Affected Vehicles.

28. In February 2014, the Defendants, GM and GMC, finally disclosed that a dangerous defect existed with its ignition switches and a massive recall was instituted.

29. On February 7, 2014, GM reported a safety recall to the National Highway Traffic Safety Administration, a service of the United States Government. In their letter, GM acknowledged the existence of an issue involving the ignition switch torque on 2005-2007 model year Chevrolet Cobalt and 2007 model year Pontiac G5 vehicles.

30. On February 10, 2014, Transport Canada issued Road Safety Recall #2014038 concerning vehicles manufactured by the Defendants. This Road Safety Recall concerned issues with the ignition switches in the vehicles referred to in paragraph 29 as well as 2005 and 2006 model year Pontiac Pursuit vehicles manufactured in Canada.

31. Subsequently, on February 12, 2014, the Defendant GM sent a letter to all dealers of GM and GMC vehicles. The Defendant GM advised of the upcoming safety recall 13454 concerning the vehicles listed in paragraph 30.

32. On February 24, 2014, GM reported a further safety recall to the National Highway Traffic Safety Administration. This in turn was followed by Transport Canada issuing a further Road Safety Recall #2014060 as a result of further disclosures made by GMC. The Road Safety Recall #2014060 concerned ignition switch issues affecting model year 2006 and 2007 Chevrolet HHR, model year 2006 and 2007 Pontiac Solstice, model year 2003-2007 Saturn Ion and model year 2007 Saturn Sky vehicles.

33. On March 4, 2014, GM and GMC sent a letter to all dealers of GM and GMC vehicles. The Defendants advised of the upcoming safety recalls 13454 and 14063 listed in paragraphs 29, 30 and 32.

34. On March 11, 2014, GM sent further correspondence with attachments to the National Highway Traffic Safety Administration concerning the defective ignition switches found in the HHR, Solstice, ion and Sky motor vehicles.

35. On March 17, 2014, the CEO of GM offered an apology in the United States for the safety issues concerning the ignition switch.

36. It was admitted in the apology of March 17, 2014 that the Defendant GM was aware for nearly 10 years of an ignition issue that affected 1.6 million cars and can interfere with air-bag deployment.

37. The CEO further stated that "After all, something went wrong with our process in this instance and terrible things happened".

38. The CEO's statements of March 17, 2014, constitute admissions and statements against interest that the Defendants breached the standard of care with respect to:

- (a) The manufacturing of the affected vehicles;
- (b) The maintenance of the affected vehicles; and
- (c) The safety of the drivers and passengers in the affected vehicles.

39. On March 28, 2014, GM and GMC issued a press release concerning the recall of a further 132,000 vehicles in Canada. The press release indicated that all ignition switches would be replaced in all model years of its Chevrolet Cobalt, HHR, Pontiac G5, Solstice and Saturn Ion and Sky in the U.S. and Canada.

V. CAUSES OF ACTION

(a) Negligent design, development and testing

40. The Defendants owed the Plaintiffs and Class Members a duty of care as follows:

- (a) to ensure that the Affected Vehicles were thoroughly and appropriately tested so as to determine if there were any potential defects associated with the product;
- (b) to ensure that the Affected Vehicles were fit for their intended or reasonably foreseeable use;
- (c) to design, develop and test the Affected Vehicles using methods and processes that conform to industry standards and regulations; and
- (d) to conduct appropriate follow-up studies on the efficacy and safety of the Affected Vehicles.

41. The Defendants were negligent in the design, development and testing of the Affected Vehicles. Such negligence includes, but is not limited to the following, that the Defendants jointly and severally:

- (a) failed to thoroughly and appropriately test the Affected Vehicles to determine the magnitude of the risks associated with their use, including but not limited to the risk of ignition switches inadvertently shutting off the engine and vehicle electrical system during normal driving conditions;
- (b) failed to conduct adequately powered studies and testing to determine the potential for ignition switches inadvertently shutting off the engine and vehicle electrical system during normal driving conditions;
- (c) designed and developed the Affected Vehicles in a manner that increased the potential for ignition switches inadvertently shutting off the engine and vehicle electrical system during normal driving conditions;
- (d) designed and developed the Affected Vehicles in a manner that caused an increased propensity for the vehicles' electrical system, power steering and power breaks to suddenly shut down;
- (e) conducted inadequate or no follow-up studies on the efficacy and safety of the Affected Vehicles;
- (f) failed to conform to industry standards, practices and regulations in the design, development and testing of the Affected Vehicles;
- (g) failed to conform with applicable disclosure and reporting obligations;
- (h) failed to monitor the post-market effects of the Affected Vehicles;
- (i) failed to conduct appropriate follow-up studies when the ignition switch defect issues associated with the Affected Vehicles became known to them;
- (j) disregarded reports of driving incidents and accidents by drivers of the Affected Vehicles who reported the sudden engine and electrical system shutdown during normal driving conditions;

- (k) failed to instruct their employees to properly monitor and record complaints associated with ignition switch defects in the Affected Vehicles;
- (l) hired incompetent personnel and failed to adequately supervise the personnel conducting the design, development and testing of the Affected Vehicles; and,
- (m) failed to take reasonable steps to ensure that the Affected Vehicles were fit for their intended or reasonably foreseeable use.

42. There existed alternative designs which were safer and economically feasible to manufacture.

43. The negligence of the Defendants in the design, development and testing of the Affected created a substantial likelihood of damage and loss for owners and drivers of the Affected Vehicles. The Plaintiffs and Class Members have suffered loss and damages as a result of the Defendants' negligence.

(b) Negligent Manufacturing

44. The Defendants owed the Plaintiffs and Class Members a duty of care as follows:

- (a) to conform to industry standards, practices and regulations in the manufacturing of the Affected Vehicles;
- (b) to conduct adequate and routine inspections of the plants manufacturing the Affected Vehicles; and
- (c) to have adequate and appropriate quality control methods in place at the plants manufacturing the Affected Vehicles.

45. The Defendants were negligent in the manufacturing of the Affected Vehicles. Such negligence includes, but is not limited to the following, that the Defendants jointly and severally:

- (a) failed to meet industry standards, practices and regulations in the manufacturing of the Affected Vehicles;
- (b) failed to adequately and routinely inspect the plants manufacturing the Affected Vehicles;
- (c) manufactured the Affected Vehicles without having in place adequate quality control protocols, or in disregard of those protocols;
- (d) hired incompetent personnel and failed to adequately supervise the personnel manufacturing the Affected Vehicles; and
- (e) continued to manufacture the Affected Vehicles when they knew or ought to have known that a defect in the ignition switch caused or could cause sudden engine and electrical system shutdown during normal driving conditions.

46. The Plaintiffs and Class Members have suffered harm and damages as a result of the Defendants' negligence in the manufacturing of the Affected Vehicles.

(c) Negligent distribution, marketing and sale

47. The Defendants owed the Plaintiffs and Class Members a duty of care as follows:

- (a) to warn the Plaintiffs and Class Members that the Affected Vehicles carried a significant risk of the sudden engine and electrical system shutdown during normal driving conditions;
- (b) to take reasonably necessary and appropriate steps to ensure that owner and drivers of the Affected Vehicles were appraised and fully and regularly informed of all the risks associated with ignition switch defects of the Affected Vehicles; and
- (c) to inform Transport Canada and other regulating agencies fully, properly, and in a timely manner of the ignition switch defects and resulting complaints associated with the Affected Vehicles.

48. The Defendants were negligent in the distribution, marketing and sale of the Affected Vehicles. Such negligence includes, but is not limited to the following, that the Defendants jointly and severally:

- (a) misinformed Transport Canada by providing it with incomplete and inaccurate information concerning the Affected Vehicles;
- (b) concealed or misled the Plaintiffs and Class Members concerning the risks associated with ignition switch defect of the Affected Vehicles;
- (c) failed to provide the Plaintiffs and Class Members with appropriate warnings concerning the failure risks associated with the ignition switch defect of the Affected Vehicles;
- (d) failed to provide the Plaintiffs and Class Members updates and current information on the risks and efficacy of the Affected Vehicles as such information became available from time to time;
- (e) failed to provide appropriate warnings of the ignition switch defect associated with the use of the Affected Vehicles on customer information pamphlets in Canada;
- (f) failed to issue a timely warn the Plaintiff and Class Members and Transport Canada about the need for comprehensive recall to address the problems associated with the ignition switch defect of the Affected Vehicles;
- (g) after receiving actual and constructive notice of the risks associated with the ignition switch defect in the Affected Vehicles, failed to issue adequate warnings, recall the product in a timely manner, publicize the risks and otherwise act properly and in a timely manner to alert the public, including warning the Plaintiffs and Class Members and Transport Canada of the vehicles' inherent risks;

- (h) engaged in a system of improper and inadequate direction to their sales representatives respecting the safety and efficacy of the Affected Vehicles;
- (i) represented that the Affected Vehicles were safe and fit for its intended purpose and of merchantable quality when they knew or ought to have known that these representations were false;
- (j) misrepresented the state of research, opinion and literature pertaining to the safety and efficacy of the Affected Vehicles;
- (k) continued to manufacture, market and promote the selling and/or distribution of the Affected Vehicles when they knew or ought to have known that the products contained a significant defect; and.
- (m) continued to manufacture, distribute and sell the Affected Vehicles notwithstanding that:
 - i. they had received many credible complaints involving sudden engine and electrical system shutdown in the Affected Vehicles; and
 - ii. their own research and analysis demonstrated a defect in the ignition switches.

49. The Plaintiffs and Class Members have suffered harm and damages as a result of the Defendants' negligence in the distribution, marketing and sale of the Affected Vehicles.

d) Unjust Enrichment

50. Substantial benefits have been conferred on the Defendants by the Plaintiffs and the Class by purchasing the Affected Vehicles, and the Defendants have knowingly and willingly accepted and enjoyed these benefits.

51. The Defendants either knew or should have known that the payments rendered by the Plaintiffs and the Class were given and received with the expectation that the Affected Vehicles would perform as represented and

warranted. For the Defendants to retain the benefit of the payments under these circumstances is inequitable.

52. The Defendants' acceptance and retention of these benefits under the circumstances make it inequitable for the Defendants to retain the benefit without payment of the value to the Plaintiffs and the Class.

53. The Plaintiffs and the Class are entitled to recover from the Defendants all amounts wrongfully collected and improperly retained by the Defendants, plus interest thereon.

54. As a direct and proximate result of the Defendants' wrongful conduct and unjust enrichment, the Plaintiffs and the Class are entitled to an accounting, restitution from, and institution of, a constructive trust disgorging all profits, benefits, and other compensation obtained by the Defendants.

VI. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

55. The Defendants manufactured and sold the Affected Vehicles with full knowledge of the fact that they were defective and would be purchased by the Plaintiffs and the Class Members. Knowledge of the defects associated with the affected vehicles was not released to the Plaintiffs and Class Members. Despite having specific information that the Plaintiffs and Class Members were at risk of serious problems associated with the use of the Defendants' vehicles, they continued or permitted the continuation of the manufacturing and selling of the Affected Vehicles without reasonable controls.

56. The Defendants knew that the ignition switch of the Affected Vehicles had a defect that could cause a vehicle's engine to lose power without warning, and that when the engine lost power there was a risk that electrical functions would fail and that the airbags would not deploy. Yet the Defendants chose not to inform Transport Canada or warn the Plaintiffs and Class about these inherent dangers despite having a duty to do so.

57. The Defendants possessed exclusive knowledge of the ignition switch defects rendering the Affected Vehicles inherently more dangerous and unreliable than otherwise similar vehicles. The Defendants intentionally concealed by failing to disclose the ignition switch defects. The Defendants' intentional concealment posed by not addressing a known dangerous defect, and intentionally concealing the same, the Defendants subjected the Plaintiffs, Class Members and the public-at-large to an unreasonable risk of death or serious bodily injury.

58. These activities were willfully carried out by the Defendants with outrageous, reckless, callous and wanton disregard for the pecuniary interests and rights of the Plaintiffs and Class Members as well as the general public. The Defendants knowingly compromised the rights and interests of the Plaintiffs and Class Members, solely for the purpose of monetary gain and profit. Furthermore, once the Defendants knew of the problems that the Affected Vehicles posed to the Plaintiffs and Class Members, the Defendants failed to advise the Plaintiffs and Class of them in a timely fashion, fully or at all.

59. The Defendants' negligence was callous and arrogant and offends the ordinary community standards of moral and decent conduct. The actions and/or omissions of the Defendants involved such want of care as could only have resulted from actual conscious indifference to the rights of the Plaintiffs and Class Members.

60. Consequently, the Plaintiffs and Class Members are entitled to aggravated damages, and an award of punitive and exemplary damages commensurate with the outrageous behaviour of the Defendants.

61. The claims of the Plaintiffs are typical of the claims of the Class in that the Representative Plaintiffs, and all Class Members, own the affected vehicles which are defective. The Representative Plaintiffs, like all Class Members, have been damaged by The Defendants' conduct in that it has incurred or will incur losses associated with the defective ignition switches. Furthermore, the factual bases of the Defendants' conduct is common to all Class Members and

represents a common thread of deliberate, fraudulent, and negligent misconduct resulting in injury to all members of the Class.

VII. DAMAGES

62. The Plaintiffs and the Class have been damaged by the Defendants' negligent acts and omissions, their misrepresentations, concealment and non-disclosure of the ignition switch defects in the Affected Vehicles, as they are now holding highly dangerous vehicles whose value has greatly diminished because of the Defendants' failure to timely disclose the serious defect.

63. The Plaintiffs and the Class were also damaged by the acts and omissions of the Defendants because the Affected Vehicles they purchased and own are worth less than they would have been without the ignition switch defects.

64. The Plaintiffs and the Class paid more for the Affected Vehicles than they would have had they known of the ignition defects or they would not have purchased the Affected Vehicles at all.

65. The Plaintiffs and the Class have incurred out-of-pocket losses as a result of the Defendants' acts or omissions, including but not limited to prior vehicle repairs attributable to the ignition switch defects, and alternate transportation.

VIII. RELIEF SOUGHT

66. The Plaintiffs repeat the foregoing paragraphs and seeks as relief the following:

- (a) an Order certifying this proceeding as national opt-out class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class;
- (b) a declaration that that the Defendants must account and disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale of the affected vehicles, or order the Defendants to make full restitution to Plaintiffs and the Class Members;

- (c) compensation and/or damages including:
 - i) general damages, including aggravated damages for personal losses; and
 - ii) special damages;
- (d) aggravated, punitive and exemplary damages;
- (e) interest pursuant to the *Judicature Act*;
- (f) costs; and
- (g) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 9th day of May, 2014.



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