

**Date: 20071003**

**Docket: T-466-05**

**Citation: 2007 FC 1007**

**Ottawa, Ontario, October 3, 2007**

**PRESENT: The Honourable Mr. Justice Hugessen**

**BETWEEN:**

**GENERAL MOTORS CORPORATION,  
GENERAL MOTORS OF CANADA LIMITED**

**Plaintiffs**

**and**

**DIABCO INTERNATIONALE INC., MOUHAMAD ALI DIAB,  
AUTO MASTER SUPPLIES KING INC., 5B GROUP INTERNATIONAL INC.  
AND AYAD (EDDY) KARKOUTI and JOHN DOE, JANE DOE  
AND OTHER PERSONS UNKNOWN  
TO THE PLAINTIFFS WHO OFFER FOR SALE, SELL, IMPORT,  
EXPORT, MANUFACTURE ADVERTISE OR DEAL IN  
COUNTERFEIT ACDELCO MERCHANDISE**

**Defendants**

**and**

**DIABCO INTERNATIONAL INC.  
MOUHAMAD ALI DIAB**

**Third parties**

**and**

**AYAD (EDDY) KARKOUTI AND  
5B GROUP INTERNATIONAL INC.**

**Third parties**

**REASONS FOR ORDER AND ORDER**

[1] On April 13, 2007, I heard and granted a summary judgment motion with costs against the defendants 5B Group International Inc. (5B Group) and Ayad (Eddy) Karkouti (Karkouti). In the formal Order entered April 18, 2007, I directed that costs against those defendants should be fixed following written representations.

[2] Plaintiffs have now filed detailed representations together with supporting draft bills of costs. The named defendants have filed nothing and the time fixed for doing so has expired.

[3] The defendants were found to be responsible for ordering, importing from China, and putting on to the Canadian market industrial quantities of counterfeit automotive parts. They have also been shown to have attempted to obstruct the proper execution of an Anton Pillar Order granted herein, to have destroyed evidence, to have indulged in misleading and delaying tactics and to have given evidence which was misleading. The plaintiffs' request to have costs fixed on an increased scale and on a solicitor and client basis is clearly well-founded.

[4] The amount claimed against these defendants as having been actually expended by plaintiffs is \$164,067.88 in fees plus disbursements of \$9,620.08. While I do not question these figures I am of the view that the amount claimed for fees represents far too high a figure to award in a case of this sort which, although complex and detailed, did not present any questions of law of more than ordinary difficulty.

[5] The plaintiffs have also presented a draft bill of costs based on Column V of the Tariff which would fix costs against these defendants in a total amount, including disbursements as above, of \$32,114.08.

[6] This latter figure in its turn seems to me to be too low and does not adequately reflect the outrageous character of these defendants' misconduct or sufficiently indemnify the plaintiffs for the costs of the action.

[7] In my view a reasonable assessment of the share to be borne by these defendants in the plaintiffs' costs would be a lump sum award, including disbursements and all taxes of \$60,000. That represents the full amount of the disbursements claimed against these defendants plus fees of more than double what would have been awarded under the Tariff.

[8] While not representing full indemnification for the plaintiffs, a situation which will rarely if ever be achieved, it properly reflects the almost criminal conduct of these defendants, their flagrant abuse of the plaintiffs' property rights, and their obstructive and delaying tactics in the litigation.

[9] The award will bear interest from the date of judgment, April 13, 2007.

**ORDER**

**THIS COURT ORDERS that**

The costs to be paid jointly and severally by the defendants 5B Group and Karkouti pursuant to the judgment pronounced herein April 13, 2007, are hereby fixed and assessed in a lump sum of \$60,000 inclusive of disbursements and taxes.

“James K. Hugessen”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-466-05

**STYLE OF CAUSE:** GENERAL MOTORS CORPORATION ET AL  
v. DIABCO INTERNATIONAL INC. ET AL

**REASONS FOR ORDER  
AND ORDER:** HUGESSEN J.

**DATED:** October 3, 2007

**WRITTEN SUBMISSIONS BY:**

CHRISTOPHER J. PIBUS  
STÉPHANE E. CARON

FOR THE PLAINTIFFS

**SOLICITORS OF RECORD:**

GOWLING LAFLEUR  
HENDERSON LLP  
TORONTO, ONTARIO

FOR THE PLAINTIFFS

MONTREAL, QUEBEC

FOR THE DEFENDANTS  
5B Group International Inc. and  
Ayad Karkouti