

CONFORMED COPY OF ORIGINAL FILED JEFFREY L. FAZIO (State Bar No. 146043) 1 Los Angeles Superior Court DINA E. MICHELETTI (State Bar No. 184141) 2 FAZIO & MICHELETTI LLP AUG 0 4 2004 1900 South Norfolk Street, Suite 350 3 San Mateo, CA 94403 John A. Clarks, Executive Officer/Clerk Telephone: 650.577.2380 4 Telecopier: 650.240.4420 Deputy CHARLIE COLEMAN 5 MICHAEL D. HAUSFELD LISA M. MEZZETTI 6 COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C. West Tower, Suite 500 1100 New York Avenue, N.W. 7 Washington, D.C. 20005 Telephone: 202.408.4600 8 Telecopier: 202.408.4699 9 Attorneys for Plaintiffs 10 CALIFORNIA SUPERIOR COURT 11 COUNTY OF LOS ANGELES 12 13 14 MARTIN DANIEL and ROBERT RAWLINGS, No. BC319600 on behalf of themselves and all others similarly 15 situated, and as private attorneys general pursuant CLASS ACTION COMPLAINT FOR to Business and Professions Code section 17204, 16 DAMAGES AND EQUITABLE RELIEF Plaintiffs, 17 18 VS. JURY TRIAL DEMANDED 19 AMERICAN HONDA MOTOR COMPANY, INC., and HONDA NORTH AMERICA, INC., 20 and DOES 1-100, inclusive, 21 Defendants. 22 23 24 25 26 27 28

Plaintiffs Martin Daniel and Robert Rawlings, on behalf of themselves and all others similarly situated, and for members of the general public as private attorneys general under California Business and Professions Code § 17204, allege on information and belief as follows:

## **PARTIES**

- Martin Daniel is a resident of Lake Arrowhead, California, who owns a 2003 Honda Element.
- 2. Robert Rawlings is a resident of Seattle, Washington, who owns a 2004 Honda Element.
- 3. American Honda Motor Company, Inc. ("American Honda") is a California corporation with principal executive offices in Torrance, California. American Honda is a wholly-owned subsidiary of Honda Motor Company, Ltd. of Japan, and markets Honda's products in the United States through a sales network of approximately 1,260 independent local automobile dealers.
- 4. Honda North America, Inc. ("Honda North America") is a California corporation with principal executive offices in Torrance, California. Honda North America is responsible for coordinating the operations of all Honda subsidiaries in North America. Unless stated otherwise, Defendants American Honda and Honda North America will be referred to collectively as "Honda."
- 5. Plaintiffs do not know the true names or capacities of the persons sued as Defendants Does 1 through 100, and therefore sue those Defendants by fictitious names. Plaintiffs believe that each of the Doe Defendants was in some manner legally responsible for the wrongdoing alleged in this Complaint. Plaintiffs will amend this Complaint to set forth the true names and capacities of these Defendants when they have been ascertained, along with appropriate additional allegations as may be required.

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6. At all relevant times, each Defendant was the agent, servant, or employee of the other Defendants, and when and by participating in the conduct alleged in this Complaint, did so within the course and scope of that agency or employment. Each Defendant is sued individually as a co-conspirator and aider and abettor. Defendants knowingly and/or recklessly conspired to engage, and/or aided and abetted, in the course of conduct set forth in this Complaint.

**GENERAL ALLEGATIONS** 

- 7. Plaintiffs bring this action on behalf of United States residents who own or lease a 2003 or 2004 model-year Honda Element ("Class Members"). Plaintiffs are informed and believe that, because of a design defect, Honda Element windshields have an inordinate and dangerous propensity to crack (the cracking defect"). Honda has sold or leased thousands of 2003 and 2004 model-year Elements ("Class Vehicles") to Class Members without disclosing the existence of the cracking defect. As described more fully below, when an Element windshield cracks, all but a few Class Members (or their insurance companies) bear the cost of the repair.
- 8. Honda introduced the Element in 2002, for sale in the 2003 model-year. Plaintiffs are informed and believe that, even though overall industry demand for automobiles in the U.S. dropped by two percent during the calendar year 2002, Honda's unit sales of automobiles in North America rose by 11.3% to a "record high" in fiscal year 2003. According to Honda, this surge was attributable to a few of the more successful Honda vehicles, and the Element was one of them.
- 9. Plaintiffs are informed and believe that Class Members began complaining about cracked windshields shortly after Honda began to sell the 2003 model-year Element. Their complaints are remarkably consistent: Element windshields crack from the bottom of the windshield and the cracks spread rapidly; the cracks often originate in areas that are shielded from road debris (e.g., under a windshield-wiper blade); and the cracks occur under circumstances that would not cause a correctly-designed windshield to crack. For example, Plaintiff Martin Daniel's windshield

cracked while the vehicle was sitting in a parking lot, and Plaintiff Robert Rawling's new Element developed its crack while parked overnight at his home. Other Class Members have reported that the slightest impact will cause the Element windshield to crack.

10. Plaintiffs are informed and believe that Honda's response to Class Members' complaints has been equally consistent: Honda denies the existence of any cracking defect. It also refuses to fix the cracked windshields under warranty. One reason provided for this position is that road debris or impact caused the crack and Honda's new-car warranty does not cover damage caused by road debris or impact. To purportedly support this position, Honda has its dealers use what is

referred to as the "pen test" to claim the windshield cracks are caused by road debris.

- Plaintiffs are informed and believe that the "pen test" (which involves tracing the crack with a pen) is a ploy: It is relied upon even when a crack occurs without cause by debris or impact, and dealers reportedly routinely blame Element windshield cracks on so-called "impact points" that are invisible or nearly invisible (e.g., smaller than a pinhole.) Honda's refusal to cover the cost of repair under warranty causes the Class Members (or their insurance companies) to bear the expense of replacing their windshields, which can cost more than \$500 (a significant percentage of the Element's approximately \$16,100 base retail sales price). And because the cracking defect is a design flaw, Class Members have replaced, and will continue to replace, their windshields more than once.
- 12. Plaintiffs are informed and believe that Honda's refusal to acknowledge the existence of the cracking defect and replace cracked windshields under warranty is due, in part, to (a) its unwillingness to tarnish the image of one of its more popular vehicles, and (b) the way Honda accounts for warranty expenses. According to Honda Motor Company, Ltd. of Japan's annual report to shareholders, Honda has concluded that the accounting estimate related to warranty reserves is a "critical accounting estimate," because changes in it can materially affect net income. To the extent that a design defect, such as the one at issue in this lawsuit, creates a spike in warranty claims, it will

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have a direct, negative impact on Honda's net income — unless Honda refuses to honor the warranty claims, as it has done here.

- 13. Plaintiffs are informed and believe that, as the number of complaints increased, and Class Members grew dissatisfied with the Element's cracked windshields, Honda was forced to acknowledge that at least some Elements are affected by a design defect. Yet, Honda claimed, incorrectly, that the cracking defect is limited to a small number of Elements whose vehicle identification numbers fall within a specific range.
- 14. In May 2003, Honda provided its dealers with a Technical Service Bulletin ("TSB"), in which Honda concedes that certain Elements have windshields that are prone to cracking. (A copy of the TSB is attached to this Complaint as Exhibit 1.) The TSB attributes the cause of the windshield cracks to an uneven flange surface.
- 15. To fix the cracking defect, the TSB advises dealers to take a hammer to the high spots on the windshield flange (to flatten them out) and to replace the windshield. Although Honda's new-car warranty does not normally cover cracked windshields, the TSB directs dealers to submit the repair order through "normal warranty." The TSB also instructs dealers that "[a]ny repair performed after warranty expiration may be eligible for goodwill consideration", meaning that Honda has also extended the terms of its new-car warranty to cover windshields that crack after that warranty has expired.
- By extending its new-car warranty to cover the replacement of certain cracked 16. windshields (and by doing so even if that warranty has expired), Honda has expanded or extended the consumer's warranty beyond its stated limit. Honda has also offered to pay for "the cost of repairing any condition that may substantially affect vehicle durability, reliability, or performance." Honda is, therefore, obligated to comply with the provisions of the California Secret Warranty Law, which is codified at California Civil Code §§ 1795.90-1795.93.

- 17. The term "secret warranty" is used to describe the practice by which an automaker establishes a policy to pay for the repair of that defect without making the defect or the policy known to the public at large. A secret warranty is usually created when the automaker realizes that a large number of its customers are experiencing a defect not covered by a factory warranty, and decides to offer warranty coverage to individual customers only if, for example, the customer complains about the problem first.
- 18. The warranty is considered "secret" because not all consumers are notified of it. Instead, the automaker usually issues a service bulletin to its regional offices and/or dealers on how to deal with the defect. Because consumers are kept in the dark about the cost-free repair, the automaker only has to reimburse those consumers who complain loudly enough; the quiet consumer pays to fix the defect him/herself. California outlawed secret warranties when it enacted the Secret Warranty Law.
- 19. Plaintiffs are informed and believe that Honda did not comply with its obligations under the Secret Warranty Law. Instead of providing Class Members with the notice the Secret Warranty Law requires, Honda left it up to them to discover for themselves the information set forth in the Element TSB. Those who did not make that discovery had to pay to replace their Class Vehicles' cracked windshields themselves.
- 20. Plaintiffs are informed and believe that even those Class Members who manage to find out about the information contained in the TSB are not assured of getting a free windshield replacement. The TSB is limited to a small number of 2003 model-year Class Vehicles whose vehicle identification numbers fall within a narrow range. Moreover, Honda employs the "pen test" to defeat claims by owners of these vehicles. Consequently, the vast majority of Class Members bear the cost of replacing the windshields themselves.

ı	21. By engaging in the conduct described above, Honda has violated the Secret Warranty
2	Law. Moreover, by selling the Class Vehicles while concealing the nature, existence and scope of
3	the cracking defect from Class Members, Honda has violated the Consumers Legal Remedies Act
4	("CLRA"), Civ. Code §§ 1750-1784, and the Unfair Competition Law ("UCL"), Bus. & Prof. Code
5	§§ 17200-17209.
6	
7	<u>CLASS ALLEGATIONS</u>
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9	22. Plaintiffs bring this class action pursuant to the provisions of Code of Civil Procedure §
0	382 and Civil Code § 1781, on behalf of themselves and all other persons similarly situated.
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12	23. Plaintiffs seek to represent a class composed of all persons residing throughout the
13	United States who currently own or lease, or have owned or leased, a Class Vehicle.
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15	24. Excluded from the class are the following:
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17	a. The Defendants and their subsidiaries, affiliates, officers, directors, and
18	employees;
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20	b. persons who have suffered physical injury as a result of a defective windshield
21	in a Class Vehicle, as well as the legal representatives, heirs, successors or assigns of any such
22	excluded class member;
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24	c. persons who have filed separate, non-class legal actions against Honda asserting
25	consumer-fraud claims based on the cracking defect; and
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1	d. persons who have pursued a claim against, and reached a verdict against or
2	settled with and validly released Honda from individual claims substantially similar to those alleged in
3	this Complaint.
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5	25. A subclass of Class Members pursuing claims under the CLRA is defined as follows:
6	All Class Members who are "consumers," as that term is defined at California Civil Code § 1760(d).
7	
8	26. Plaintiffs are informed and believe that the proposed class comprises thousands of
9	persons throughout the country who own or lease, or have owned or leased, one or more Class
10	Vehicles. The class is, therefore, so numerous and geographically dispersed that joinder of all
11	members in one action is impracticable.
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13	Honda has acted with respect to Plaintiffs and the Class Members in a manner generally
14	applicable to each of them. There is a well-defined community of interest in the questions of law and
15	fact involved, which affect all Class Members. The questions of law and fact common to the class
16	predominate over the questions that may affect individual Class Members, including but not limited to
17	the following:
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19	a. whether Class Vehicles' windshields have an inordinately high propensity to
20	crack;
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22	b. whether these cracks are the result of a design defect;
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24	c. whether Honda knew or reasonably should have known of the cracking defect
25	in Class Vehicles before it sold them to the consuming public;
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27	d. whether Honda knew or reasonably should have known that the cracking defec
28	is a potential safety hazard;
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1	e. whether Honda wrongfully profited from causing the distribution and sale of	r
2	lease of Class Vehicles under false pretenses, by failing to inform the consuming public about the	3
3	cracking defect;	
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5	f. whether Honda's conduct, as alleged in this Complaint, constitutes a violation	1
6	of the Secret Warranty Law;	
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8	g. whether Honda's conduct, as alleged in this Complaint, constitutes violations of	f
9	the CLRA;	
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11	h. whether Honda's conduct, as alleged in this Complaint, has violated the UCL;	
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13	i. whether each Class Vehicle should be recalled and retrofitted in a manner that	at
14	will correct the cracking defect;	
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16	j. whether Honda should be required to provide an extended warranty to cover the	ıe
17	cracking defect on all affected Class Vehicles; and	
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19	k. whether Honda should be required to reimburse those Class Members who have	<i>i</i> e
20	paid to repair the cracking defect at their own expense.	
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22	28. Because they each purchased a Class Vehicle with the cracking defect, Plaintiffs a	re
23	asserting claims that are typical of the claims of the entire class.	
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25	29. Plaintiffs will fairly and adequately represent and protect the interests of the class,	in
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30. Plaintiffs have retained counsel who have considerable experience and success in the prosecution of class actions and other forms of complex litigation.

- 31. In view of the complexity of the issues and the expense that an individual Class Member would incur if he or she attempted to obtain relief from a large corporation such as Honda, the claims of individual Class Members do not involve monetary amounts that are sufficient to support separate actions. Because of the size of the individual Class Members' claims, few, if any, Class Members could afford to seek legal redress for the wrongs complained of in this Complaint.
- 32. The class is readily definable, and prosecution as a class action will eliminate the possibility of repetitious litigation and will provide redress for claims too small to support the expense of individual, complex litigation. Absent a class action, the Class Members will continue to suffer losses, Honda's violations of law will be allowed to proceed without remedy, and Honda will retain revenue as a result of its wrongdoing. In addition, without a class action, Class Vehicles will remain on the road in their dangerously defective and unsafe condition. A class action therefore provides a fair and efficient method for adjudicating this controversy.
- 33. The prosecution of separate claims by individual Class Members would create a risk of inconsistent or varying adjudications with respect to at least thousands of individual Class Members, which would, as a practical matter, dispose of the interests of the Class Members not parties to those separate actions or would substantially impair or impede their ability to protect their interests and enforce their rights.
- 34. The proposed class fulfills the certification criteria of California Code of Civil Procedure § 382 and California Civil Code § 1781. Accordingly, certification is appropriate pursuant to both of those statutory provisions.

# **FIRST CAUSE OF ACTION**

# (Deceptive Practices in Violation of the CLRA)

35. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

- 36. The acts and practices described in this Complaint were intended to result in the sale of motor vehicles to the consuming public. Honda's acts and practices violated, and continue to violate, the CLRA in at least the following respects:
- a. representing that Class Vehicles have characteristics, uses or benefits that they do not have, in violation of § 1770(a)(5) of the CLRA;
- b. representing that Class Vehicles are of a particular standard, quality or grade when they are of another, in violation of § 1770(a)(7) of the CLRA; and
- c. advertising goods with the intent not to sell them as advertised, in violation of § 1770(a)(9) of the CLRA.
- 37. Plaintiffs seek and are entitled to equitable relief on behalf of the members of the CLRA subclass in the form of an order (a) enjoining Honda from continuing to engage in the practices described in this Complaint; (b) requiring Honda to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint; (c) requiring Honda to disgorge all illgotten gains flowing from the conduct described in this Complaint; (d) requiring Honda to provide public notice of the true nature and scope of the cracking defect; and (e) requiring Honda to recall and retrofit all Class Vehicles in a manner that will correct the cracking defect or, in the alternative, to provide warranty coverage for the cracking defect in all Class Vehicles.

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38. Pursuant to § 1782 of the CLRA, Plaintiffs have notified Honda in writing of the particular violations of § 1770 of the CLRA (the "Notice") and have demanded that Honda correct, repair, or replace the defectively-designed windshields in Class Vehicles, or otherwise rectify the cracking defect. Plaintiffs sent the Notice by certified mail, return-receipt requested to Honda's principal place of business at Torrance, California. Should Honda fail to comply with the demands set forth in the Notice, Plaintiffs will amend this Complaint pursuant to § 1782 of the CLRA, to include claims for compensatory and statutory, and punitive damages on behalf of themselves and all members of the CLRA subclass.

# SECOND CAUSE OF ACTION

# (Violations of the Unfair Competition Law)

- 39. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the preceding paragraphs of this Complaint.
- 40. By committing the acts and practices alleged in this Complaint, Honda has violated the UCL, Bus. & Prof. Code §§ 17200-17209. More specifically, in addition to violating the UCL's provisions against fraudulent and unfair business practices by engaging in such acts and practices, Honda has violated the UCL's proscription against unlawful conduct by virtue of its violations of the CLRA, as alleged in the First Cause of Action, and by violating the Secret Warranty Act.
- 41. The TSB (Exhibit 1 hereto) constitutes a "secret warranty" for the reasons described in paragraphs 16 through 21 of this Complaint. The Secret Warranty Law imposes several duties on all automakers, including Honda, each of which is designed to do away with secret warranties. Specifically, the Secret Warranty law requires automakers to notify all eligible consumers by first-class mail, within 90 days of adoption, whenever they enact "any program or policy that expands or extends the consumer's warranty beyond its stated limit or under which [the] manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the

cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance[.]" Plaintiffs are informed and believe that Honda has not complied with this requirement.

- 41. The Secret Warranty Law also requires automakers to provide the New Motor Vehicle Board with a copy of a notice containing information about the true nature and scope of the cracking defect, and their entitlement to warranty coverage. Plaintiffs are informed and believe that Honda has not complied with this requirement.
- 42. In addition, the Secret Warranty Law requires automakers to advise their dealers, in writing, of the terms and conditions of any warranty extension, adjustment, or reimbursement program. Plaintiffs are informed and believe that Honda has not complied with this requirement.
- 43. The Secret Warranty Law requires automakers to "implement procedures to assure reimbursement of each consumer eligible under an adjustment program who incurs expenses for repair of a condition subject to the program prior to acquiring knowledge of the program." Again, Plaintiffs are informed and believe that Honda has not complied with this requirement.
- 44. Plaintiffs seek an order of this Court pursuant to § 17203 of the UCL, as follows: (a) enjoining Honda from continuing to engage in the unlawful, unfair and fraudulent business practices described in this Complaint; (b) requiring Honda to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint; (c) requiring Honda to disgorge all ill-gotten gains flowing from the conduct described in this Complaint; (d) requiring Honda to provide public notice of the true nature and scope of the cracking defect; (e) requiring Honda to recall and retrofit all Class Vehicles in a manner that will correct the cracking defect or, in the alternative, to provide warranty coverage for the cracking defect in all Class Vehicles; and (f) requiring Honda to comply with its obligations under the Secret Warranty Law.

# PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, and for members of the general public as private attorneys general under California Business and Professions Code § 17204, pray for relief, jointly and severally, pursuant to each cause of action set forth in this Complaint as follows:

- 1. For an order certifying that the action may be maintained as a class action.
- 2. For an award of equitable relief pursuant to the CLRA and the UCL as follows: (a) enjoining Honda from continuing to engage in the unlawful, unfair and fraudulent business practices described in this Complaint; (b) requiring Honda to make full restitution of all monies wrongfully obtained as a result of the conduct described in this Complaint; (c) requiring Honda to disgorge all illgotten gains flowing from the conduct described in this Complaint; (d) requiring Honda to provide public notice of the true nature and scope of the cracking defect; (e) requiring Honda to recall and retrofit all Class Vehicles in a manner that will correct the cracking defect or, in the alternative, to provide warranty coverage for the cracking defect in all Class Vehicles; and (f) requiring Honda to comply with its obligations under the Secret Warranty Law.
- 3. For an award of attorney fees pursuant to, *inter alia*, § 1780(d) of the CLRA and Code of Civil Procedure § 1021.5.
  - 4. For an award of costs.
  - 5. For pre- and post-judgment interest on any amounts awarded.
  - 6. For such other relief as the Court deems just and proper.

DATED: July 31, 2004

FAZIO & MICHELETTI LLP

by Dina E. Micheletti

Attorneys for Plaintiffs
Martin Daniel and Robert Rawlings,
on behalf of themselves and all others similarly situated

COMPLAINT

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03-028

Applies To: 2003 Element 2WD - From VIN 5J6YH1...3L000001 thru 5J6YH1...3L009372 2003 Element 4WD - From VIN 5J6YH2...3L000001 thru 5J6YH2...3L022888 May 6, 2003

# 2003 Element: Windshield Is Cracked at the Lower Corners

#### SYMPTOM

Cracks in the windshield at the lower corner(s).

#### **PROBABLE CAUSE**

The windshield flange surface is uneven.

#### **CORRECTIVE ACTION**

Remove the high spots on the windshield flange, and replace the windshield.

#### PARTS INFORMATION

Windshield:

P/N 73111-SCV-A00, H/C 7285471

Windshield Moldings:

P/N 73150-SCV-A01, H/C 7285505

Rubber Dam Set:

P/N 04731-SCV-A00, H/C 7310774

## **WARRANTY CLAIM INFORMATION**

In warranty: The normal warranty applies.

Operation Number: 831120

Flat Rate Time:

1.7 hours

Failed Part:

P/N 73111-SCV-A00

H/C 7285471

Defect Code:

017

Contention Code:

**A99** 

Template ID:

03-028A

Skill Level:

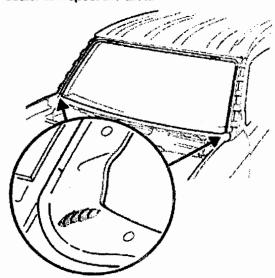
Repair Technician

Out of warranty: Any repair performed after warranty expiration may be eligible for goodwill consideration by the District Parts and Service Manager or your Zone Office. You must request consideration, and get a decision, before starting work.

### REPAIR PROCEDURE

- 1. Remove the windshield (see page 20-37 in the 2003 Element Service Manual).
- 2. Inspect the mounting flange for any high spots, especially at the base of the A-pillar where the dashboard attaches.

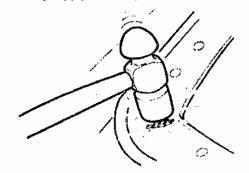
NOTE: You may need to remove some of the sealer to inspect the area.



# NOTICE

To prevent damage to the A-pillar or the surrounding area, avoid using excessive force.

3. Using a hammer, carefully flatten the high spots so they are even with the rest of the area. If necessary, apply touch-up paint.



4. Install the new windshield (see page 20-37 in the service manual).

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ATB 25210 (0005)

